

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**ROBERT BICKERSTAFF**  
Claimant

**LYNCH LIVESTOCK INC**  
Employer

**APPEAL 21A-UI-15970-SN-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 04/25/21**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant/appellant, Robert Bickerstaff, filed an appeal from the July 12, 2021, reference 01, Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 8, 2021. The claimant participated personally. Exhibit A was admitted into the record.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed full-time as an area manager and was separated from employment on March 30, 2021, when he was given the option to resign in lieu of termination. Continuing work was not available. The claimant reported directly to Director of Procurement Mike Faga and Human Resources Director Heart Dieschbourg.

The employer buys various hogs from farmers. The employer’s staff signs a packing and stocking agreement which specifies the criteria for buying hogs are various grades. The weight splits for the animals is clear. However, there is a certain amount of subjectivity in the grades of hogs which are given a number grade with one being the best, second being intermediate and three being junk grade hogs. For example, if an animal has cyst or some other defect they may be given a lower grade. These criteria loosely follow the judging characteristics used at the Iowa State Fair, except those are show grade animals.

On March 21, 2021, there was a packer and stocker investigation initiated at one of the employer’s hog bind stations in Waucoma, Iowa. The Site Manager Tyler Thomas and Area

Manager Lowell Busch were terminated as a result of the investigation. Essentially, Mr. Thomas and Mr. Busch were accused of not following the packing and stocking guidelines for classifying hogs.

On March 24, 2021, as part of the aftermath of the investigation, the employer's attorney conducted an internal investigation of the company. The claimant acknowledged to the company attorney that he had a difference of opinion with the classification of certain hogs than the farmer for a deal in the summer of 2020. The claimant cannot be sure this was the reason the employer terminated him because the conversation touched on other dates.

On March 29, 2021, Mr. Faga and Human Resources Department Director Heather Dieschbourg informed the claimant that he would be terminated, if he did not resign. Ms. Dieschbourg and Mr. Faga did not specify what led to the claimant's termination. They only stated that Owner Gary Lynch had determined he would be terminated.

On March 31, 2021, the claimant submitted his resignation to the employer, which was effective immediately. The claimant provided a copy of his resignation. (Exhibit A)

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant quit in lieu of discharge, and disqualifying, job-related misconduct has not been established.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. They remain disqualified until such time as they re-qualify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Admin. Code r. 871-24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

.A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). In this case, the claimant did not have the option of remaining employed nor did she express intent to terminate the employment relationship. Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In analyzing quits in lieu of discharge, the administrative law judge considers whether the evidence establishes misconduct that would disqualify the claimant for unemployment insurance benefits.

Iowa Administrative Code rule 871-24.32(1)a provides:

“Misconduct” is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r. 871-24.32(8) provides:

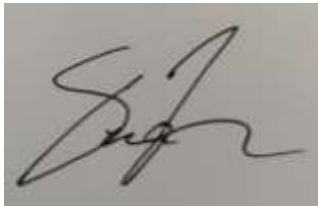
(8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The purpose of this rule is to assure that an employer does not save up acts of misconduct and spring them on an employee when an independent desire to terminate arises. In this case, claimant had no prior documented discipline and was unaware his job was in jeopardy. The claimant further contends the conduct he was terminated for was subjective and the employer did not give clear rules regarding classifying and buying hogs. Employer presented no evidence of a final incident which led to the decision to discharge. Based upon the evidence presented, the employer presented insufficient evidence to corroborate its allegation that the claimant was discharged for misconduct. Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has failed to meet its burden of proof in establishing a current act of disqualifying job-related misconduct. As such, benefits are allowed. Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law.

**DECISION:**

The unemployment insurance decision dated July 12, 2021, reference 01, (reference 01) is REVERSED. The claimant did not quit the employment. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.



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Sean M. Nelson  
Administrative Law Judge  
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September 16, 2021  
Decision Dated and Mailed

smn/ol