

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TYLER N SUMMERS
Claimant

APPEAL 21A-UI-14634-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KPI CONCEPTS LLC
Employer

**OC: 03/21/21
Claimant: Appellant (2R)**

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

STATEMENT OF THE CASE:

Claimant filed an appeal from the June 17, 2021 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on August 23, 2021, at 3:00 p.m. Claimant participated. Employer participated through Chelsea Wallace, Human Resources. Claimant's Exhibit A was admitted. Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUE:

Whether claimant's separation was a discharge for disqualifying job-related misconduct or a voluntary quit without good cause attributable to employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time Machine Operator from June 24, 2019 until his employment with KPI Concepts ended on June 1, 2020. Claimant worked Monday through Friday from 7:30 a.m. until 4:30 p.m. Claimant last performed work for employer on March 20, 2020. Claimant was unavailable for work after March 20, 2020, because he is a single parent whose child's school was closed due to Covid-19. Claimant's child was attending school remotely and required supervisions. Claimant did not have alternate childcare available.

On April 30, 2020, employer sent claimant a letter asking him to return to work. Claimant responded that he was not able to return to work because he lacked childcare. Employer sent claimant leave of absence forms to complete and return. Claimant did not respond or return the completed forms.

On May 21, 2020, employer sent claimant a letter recalling him to work on May 28, 2020. The letter stated that if claimant did not report to work or contact employer prior to May 28, 2020, he would be considered to have refused recall and abandoned his employment. The letter instructed claimant to contact Human Resources and provided contact information for Chelsea Wallace, Human Resources Generalist. Claimant received the letter on June 19, 2020.

The issue of whether claimant was able to and available for work since March 22, 2020 has not been the subject of an initial fact-finding interview or decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not voluntarily quit his employment; claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code §§ 96.5(1). 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). Where there is no expressed intention or act to sever the employment 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 this case, claimant had no intention of terminating his employment relationship with KPI Concepts. Claimant did not respond to employer's May 21, 2020 letter prior to May 28, 2020 because he did not receive it until June 19, 2020 – not because he intended to abandon his job. Because claimant did not voluntarily quit his job, claimant's separation from employment must be analyzed as a discharge.

Iowa Code section 96.5(2)(a) provides:

An individual shall be *disqualified for benefits*:

2. *Discharge* for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The disqualification shall continue until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.32(1)(a) provides:

a. "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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

There is no evidence of misconduct by claimant. The final incident prior to claimant's discharge was his failure to respond to employer's May 21, 2020 letter before May 28, 2020. Claimant did not receive the letter until June 19, 2020; therefore, his failure to respond to the letter prior to the deadline is reasonable. Employer has not met its burden of proving disqualifying job-related misconduct. Benefits are allowed provided claimant is otherwise eligible.

The issue of whether claimant is able to and available for work effective March 22, 2020 should be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The June 17, 2021 (reference 02) unemployment insurance decision is reversed. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

REMAND:

The issue of whether claimant is able to and available for work effective March 22, 2020 is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.



Adrienne C. Williamson
Administrative Law Judge
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August 30, 2021
Decision Dated and Mailed

acw/mh