

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRAVIS A PAINE
Claimant

TONYS TIRE SERVICE INC
Employer

APPEAL 21R-UI-11689-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/25/20
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit from Employment

STATEMENT OF THE CASE:

On December 22, 2020, the claimant, Travis A. Paine, filed an appeal from the December 18, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment due to excessive, unexcused absenteeism. The parties were properly notified of the hearing. A telephonic hearing was held at 8:00 a.m. on July 15, 2021. The claimant, Travis A. Paine, participated. The employer, Tony's Tire Service, Inc., participated through Amanda Sowle, Office Manager. No exhibits were offered or admitted into the record.

ISSUE:

Did the claimant quit the employment without good cause attributable to the employer or was he discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began full-time employment with Tony's Tire Service, Inc., as a mechanic/shop employee on May 22, 2019. Claimant worked primarily a daytime, Monday through Friday schedule, though he also assisted with after-hours calls when possible. Claimant's employment ended effective May 14, 2020, when the employer discharged him.

Claimant last reported to work on May 14, 2020. After leaving work that day, claimant lost consciousness, collapsed on top of his grill, and suffered serious burns to his body. Claimant contacted the employer to let them know that he would be out of work for a considerable period of time due to this significant injury.

Claimant remained in contact with the employer while healing from his injury. At one point in August 2020, claimant was frustrated with the amount of time his healing process was taking. He became intoxicated and then called his manager, Chris, to inquire about coming back to work. Chris told him to focus on the healing process and to return to work when he was able.

In early October, claimant went to the doctor to obtain a release to return to work. Claimant initially submitted a note to the employer that was not “black and white” enough for Chris, so claimant returned to the doctor for further testing and a clearer articulation of his capabilities. His doctor then wrote a note explaining that while the doctor could not pinpoint the exact cause of the May 14 medical event, there did not appear to be any underlying condition that would prevent claimant from safely performing his job duties for the employer. The parties agree this note is dated October 7, 2020, and was submitted to the employer.

When claimant gave the October 7 doctor’s note to Chris, Chris informed claimant that his position had been filled while he was out on medical leave. Chris offered him work in an overnight position taking after-hours calls, but claimant could not accept this position, as he has primary physical custody of a minor child. Claimant subsequently opened a claim for unemployment insurance benefits effective October 25, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged claimant for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

The first issue to be determined is whether claimant voluntarily quit or whether the employer discharged claimant.

Iowa Code §96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

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. The burden of proof rests with the employer to show that the claimant voluntarily left the employment. *Irving v. Empl. App. Bd.*, 15-0104, 2016 WL 3125854, (Iowa June 3, 2016). 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). It 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 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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness’s testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable

evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact above show how the administrative law judge has resolved the credibility issues in this matter. After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge found claimant presented straightforward, reasonable, firsthand testimony regarding the sequence of events between May and October 2020. Sowle, in contrast, gave shifting reasons and explanations for claimant's separation, presented no firsthand testimony or supporting documentation, and was simply less believable than the claimant.

The credible evidence in the record does not support a finding that claimant quit his employment. Claimant went through numerous medical tests to get cleared to return to work for the employer. The administrative law judge does not believe that after being cleared to return to employment, he would then quit his job. Rather, the credible evidence in the record shows that the employer discharged claimant from employment. Therefore, this case will be analyzed as a discharge and the employer bears the burden to establish disqualifying misconduct.

The second issue to be determined is whether the employer discharged claimant for disqualifying, job-related misconduct.

Iowa Code § 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 individual shall be disqualified for benefits 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:

Discharge for misconduct.

(1) Definition.

- 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 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, provided the discharge is not contrary to public policy. However, if the employer 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.

Here, the evidence in the record shows that the employer ended claimant's employment while claimant was out on medical leave. This may have been a reasonable business decision or a decision made out of necessity. However, the employer has not shown that it ended claimant's employment due to any disqualifying, job-related misconduct. Therefore, the administrative law judge finds that the claimant was separated for no disqualifying reason, and benefits are allowed.

DECISION:

The December 18, 2020 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Elizabeth A. Johnson
Administrative Law Judge
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July 28, 2021
Decision Dated and Mailed

lj/scn