

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANTHONY J BUSS
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL 21A-UI-16230-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/11/21
Claimant: Appellant (2R)

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

STATEMENT OF THE CASE:

The claimant, Anthony J. Buss, filed an appeal from the July 13, 2021, (reference 02) unemployment insurance decision that denied benefits based upon the determination that claimant quit employment with the employer, Casey's Marketing Company, by failing to call in or report to work for three consecutive shifts. The parties were properly notified of the hearing. A telephone hearing was held on September 14, 2021. The hearing was scheduled to be consolidated with the hearing for appeal number 21A-UI-16229-AR-T. The claimant participated with his attorney, Stuart Higgins. The employer did not respond to the hearing notice, and did not participate.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer, or 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: Claimant was employed full-time as a cashier/sales associate from August 2018, until this employment ended in June 2020, when he was discharged.

In March 2020, as the COVID-19 pandemic was setting in, claimant approached his store manager, Clark, and expressed that he was worried for his health. Claimant is at high risk for contracting the virus. Clark and claimant agreed that claimant would begin a leave of absence in order to protect claimant's health. Clark told him that he would be welcome back when he was able to return. Claimant called a couple of times during the months that elapsed just to maintain contact with the employer.

In July, claimant called the store to update the employer on his status. At that time, Clark told claimant that the employer had "let [claimant] go" a couple of weeks earlier. Claimant was not given a reason for his discharge. He was not warned prior to the discharge that his employment status may change or that his job was in jeopardy. Claimant was never given information by the

employer indicating how frequently or by what method he should keep in touch with the employer during his leave.

Claimant's ability to and availability for work has not been the subject of an initial determination by Iowa Workforce Development at this time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

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 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).

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989); see also Iowa Admin. Code r. 871-24.25(35). 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 a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Claimant testified that he attempted to maintain contact with the employer during his leave, and believed he remained employed with the employer until he was informed otherwise. It is unlikely that claimant would have made efforts to maintain contact with the employer if he intended to abandon his position. Additionally, claimant provided unrebutted testimony that he was told he had been "let go," which also suggests the separation was involuntary on claimant's part and initiated by the employer. The separation was a discharge.

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). 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. 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." *Id.*

The employer has not demonstrated that claimant engaged in disqualifying misconduct that resulted in his separation from employment. The employer has not rebutted claimant testimony that he was not warned that his employment would end, and he was not given a reason for the end of his employment. The separation is not disqualifying.

DECISION:

The July 13, 2021, (reference 02) decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

REMAND:

For the reasons outline in the Findings of Fact above, the issue of claimant's ability to and availability for work is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



Alexis D. Rowe
Administrative Law Judge

September 21, 2021
Decision Dated and Mailed

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