

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**JESSE R CRAIG-HANSEN**  
Claimant

**APPEAL NO: 06A-UI-09991-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QWEST CORPORATION**  
Employer

**OC: 09/10/06 R: 01  
Claimant: Respondent (5)**

Section 96.5-2-a – Discharge  
Section 96.5-1 – Voluntary Leaving  
Section 96.7-2-a(2) – Charges Against Employer's Account

**STATEMENT OF THE CASE:**

Qwest Corporation (employer) appealed a representative's October 5, 2006 decision (reference 01) that concluded Jesse R. Craig-Hansen (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 25, 2006. The claimant participated in the hearing. Marcy Schneider of TALX Employer Services appeared on the employer's behalf and presented testimony from two witnesses, Cilla Carpenter and Dawn Boston. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on April 24, 2006. He worked full time as a consumer sales service associate in the employer's Sioux City, Iowa call center. His normal work schedule was from 11:00 a.m. to 8:00 p.m. Monday through Friday (and every third Saturday). His last day of work was August 16, 2006.

The claimant had called in an absence due to illness on June 27. On June 29 the employer opened a medical leave application for the claimant. It was learned that he was going to have tonsil surgery sometime in July. However, on or about June 30 the employer advised the claimant that he had not worked for the business long enough to qualify for FMLA (Family Medical Leave) or other formal medical leave.

The claimant's surgery was July 17. The claimant's doctor did provide various medical excuses and information to the employer, but the employer concluded that there were some periods of

time for which the doctor had not provided sufficient medical explanation as to why the claimant needed to be off work, even though the doctor's excuse on its face excused the claimant from work for that period of time. As a result, the employer considered a portion of the time the claimant was off work to be an unexcused absence.

On August 8 the employer sent the claimant a certified letter indicating that if he did not report back to work as of August 14 he would be considered to have abandoned his job. In fact, the claimant did return back to work on August 14. He worked his full shift that day as well as August 15 and August 16. He came into the building to report for work on August 17, however, as he passed by the break room on his way to log onto his phone he was stopped by a member of upper management and told to leave, that he was discharged because his attendance was unsatisfactory. As a result, the claimant left.

The claimant's immediate supervisor, Ms. Boston, was not aware of the action taken by the member of upper management and considered the claimant a no-call, no-show for work on August 17. On August 21 she sent him another letter to return to work by August 24. The claimant received the letter, but as he had already been told by the member of upper management that he was discharged he assumed the letter was in error and did not respond. Ms. Boston then considered the claimant to have quit by job abandonment as of August 24.

The claimant established an unemployment insurance benefit year effective September 10, 2006.

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

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct.

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.

871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The employer asserted that the claimant was not discharged but that he quit by job abandonment. The claimant reasonably relied upon the directive of the member of upper management that he was to leave and was discharged. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

The focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or
  - b. Show an intentional and substantial disregard of:
    1. The employer’s interest, or
    2. The employee’s duties and obligations to the employer.

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.

871 IAC 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The reason the employer effectively discharged the claimant was his attendance. Absenteeism can constitute misconduct, however, to be misconduct, absences must be both excessive and unexcused. A determination as to whether an absence is excused or unexcused does not rest solely on the interpretation or application of the employer's attendance policy. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Cosper, supra. Even though the absences may not have satisfied the employer's more stringent requirements for a medically excused absence, the employer knew or should have known that the claimant would be absent for an extended period of time. Floyd v. Iowa Dept. of Job Service, 338 N.W.2d 536 (Iowa App. 1986). Because the final absence was related to properly reported illness or other reasonable grounds, no final or current incident of unexcused absenteeism occurred which establishes work-connected misconduct and no disqualification is imposed. The employer has failed to meet its burden to establish misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

The final issue is whether the employer's account is subject to charge. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7. The base period is "the period beginning with the first day of the five completed calendar quarters immediately preceding the first day of an individual's benefit year and ending with the last day of the next to the last completed calendar quarter immediately preceding the date on which the individual filed a valid claim." Iowa Code § 96.19-3. The claimant's base period began April 1, 2005 and ended March 31, 2006. The employer did not employ the claimant during this time, and therefore the employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

#### **DECISION:**

The representative's October 5, 2006 decision (reference 01) is modified with no effect on the parties. The claimant did not voluntarily quit and the employer did discharge the claimant but

not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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