

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RYAN P POSTEL
Claimant

RIDLEY USA INC
Employer

APPEAL 17A-UI-04821-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/16/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 2, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 24, 2017. Claimant participated. Employer participated through director of operations Mark Jaster. Claimant Exhibit A was admitted into evidence with no objection.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an utility operator from August 29, 2016, and was separated from employment on April 17, 2017, when he was discharged.

The employer has a written policy that requires two employees in its facility whenever manufacturing is being done. The employer does not have a written policy regarding the use of profanity in the workplace. The employer has a written policy that harassment and violence are not tolerated in the workplace. Claimant was aware of the employer's policies.

On April 12, 2017 around 7:30 p.m., while claimant was working, he had an altercation with a coworker (Adam). Claimant and Adam were the only employees working in the facility at the time. Adam was not claimant's supervisor, he was just a coworker. While they were working, claimant turned the radio to a different station. After claimant turned the radio to a different station, Adam confronted claimant and started yelling at him. Adam yelled at claimant, "what the f**k your problem" and claimant asked Adam what he was talking about. Adam told claimant not to change the "f**king" radio. Adam told claimant that Doug bought the radio and Adam bought the speakers. Claimant replied that he did not know Adam's name was on the

radio. Adam told claimant to keep his hands off of the radio. Claimant then walked away from the confrontation. A couple minutes later, Adam approached claimant and asked him to change the station. Claimant told Adam he did not know what station it had been on and to calm down, it's a "damn" radio. Adam then went and changed the radio station. When Adam walked by claimant, claimant told Adam to not talk to him like that. Adam laughed at claimant and started physically nudging claimant. Adam asked claimant what he was going to do about it. Claimant replied nothing and asked Adam why he does not talk to anyone else like this. Adam started getting in claimant's face and backing him up. Claimant felt threatened and did not feel comfortable at the facility. Claimant told Adam he was going to go call James Chandler, his direct supervisor. Claimant attempted to call Mr. Chandler at least three times while he was in the facility, but he was unsuccessful each time. After he was unable to reach Mr. Chandler, claimant then left the facility around 8:05 p.m. because he felt threatened by Adam.

After claimant left the facility, he tried to get a hold of Mr. Chandler again, but he was unsuccessful. Around 8:30 p.m., claimant was finally able to speak to Mr. Chandler. Claimant explained to Mr. Chandler what happened with Adam. Mr. Chandler told claimant he needed to return to the facility or it would be considered a voluntary quit. Mr. Chandler told claimant he was on the way to the facility. Claimant did not say anything more because Mr. Chandler told claimant he was going to call the district manager. Claimant then called law enforcement to report the incident with Adam. A law enforcement officer went to the facility and investigated the incident. The law enforcement officer did not file any charges. Later claimant spoke to Mr. Chandler on the phone. Claimant Exhibit A. Claimant told Mr. Chandler that he would meet Mr. Chandler at the facility to talk, but Mr. Chandler told him he could not be on the property. Claimant Exhibit A. Mr. Chandler told claimant he quit when he walked off the property. Claimant Exhibit A. Claimant told Mr. Chandler that he felt threatened and he left after he could not get a hold of Mr. Chandler. Claimant Exhibit A. Claimant told Mr. Chandler he tried to get a hold of Mr. Chandler several times and he did not know what to do. Claimant Exhibit A. Mr. Chandler told claimant to contact him tomorrow (April 13, 2017). Claimant Exhibit A.

On April 13, 2017, claimant met with Mr. Chandler and discussed the incident with Adam. Mr. Chandler told claimant that it was not good for him because he left an employee (Adam) by himself at the facility. Claimant told Mr. Chandler he did not know what to do and that he tried to get a hold of Mr. Chandler. Mr. Chandler told him he should have stayed at the facility. Claimant told Mr. Chandler he was concerned about his safety. Claimant provided a written statement regarding the incident. Claimant did not have to work on April 13, 2017 and his next scheduled work day was April 17, 2017. On April 17, 2017, Mr. Chandler told claimant he was separated from employment. Claimant Exhibit A. Mr. Chandler and Adam still work for the employer.

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. Benefits are allowed.

Iowa Code section 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 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.

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 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).

On April 12, 2017, after claimant was unable to reach Mr. Chandler, he left the facility because he felt threatened by the only other person in the facility. After Mr. Chandler arrived at the facility, claimant clearly informed Mr. Chandler he would return to the facility to talk with Mr. Chandler; however, Mr. Chandler informed him that he was not allowed back at the facility. Claimant also clearly informed Mr. Chandler that he did not intend to quit, but he was still not allowed back at the facility to work. On April 17, 2017, Mr. Chandler told claimant that his employment was over. Since claimant clearly expressed his intention that he was not quitting, but feared for his safety and the employer would not have allowed him to continue working had he returned to the facility, the separation was a discharge, the burden of proof falls to the employer, and the issue of misconduct is examined.

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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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, employer incurs potential liability for unemployment insurance benefits related to that separation. The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer's policy requiring two employees be present at the facility whenever manufacturing is being done for safety reasons is reasonable. The employer's policy prohibiting harassment and violence in the work place is also reasonable.

Although claimant clearly violated the employer's policy by leaving his coworker alone at the facility on April 12, 2017, he did so due to the actions by his coworker that caused him to feel threatened. It was not unreasonable for claimant to completely remove himself from the area when he feels threaten, especially after he tried to contact his direct supervisor multiple times. Although Mr. Jaster testified that Adam told the employer that it was only a disagreement, that no profanity was used, and he did not touch claimant, the employer did not present a witness with direct, first-hand knowledge of the incident. Whereas, claimant credibly testified that on April 12, 2017, Adam yelled profanity at him, physically nudged him, got in his face, and was backing him up. Claimant also credibly testified he felt threaten by Adam and he attempted to contact Mr. Chandler multiple times from the facility, but was unsuccessful. Claimant then made a reasonable decision to leave the facility where Adam was located. Claimant's testimony that he felt threatened at the time was corroborated by the fact that he contacted law enforcement

about the incident after he left the facility. Furthermore, claimant offered to return to the facility after Mr. Chandler arrived, but the employer told him he could not return and he was eventually discharged.

The employer did not provide sufficient eye witness evidence regarding the incident between claimant and Adam to rebut claimant testimony about the incident. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). It was not unreasonable for claimant to completely remove himself from the area when he feels threaten, especially after he tried to contact his direct supervisor multiple times. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The May 2, 2017, (reference 01) unemployment insurance decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs