BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

DOMINIC T MCNEELEY	:	
	:	**HEARING NUMBER:** 11B-UI-05519
Claimant,	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
DICKERSON MECHANICAL INC	:	
Employer.		

SECTION: 10A.601 Employment Appeal Board Review

D E C I S I O N

FINDINGS OF FACT:

A hearing in the above-matter was held May 18, 2011 in which the issues to be determined were whether the claimant was discharged for misconduct; and whether the claimant voluntarily left for good cause attributable to the employer. The administrative law judge's decision was issued May 19, 2011, which determined that the claimant voluntarily quit with good cause attributable to the employer. The administrative law judge's decision has been appealed to the Employment Appeal Board.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2011) provides:

> 5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of an administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

The Employment Appeal Board concludes that the record as it stands is insufficient for the Board to issue a decision on the merits of the case. First off, we ask the question: *Is a Claimant Who Is Forced to Quit Automatically Qualified For Benefits No Matter What They Did Wrong?*

The Administrative Law Judge seems to have found that whenever an employee is given the choice to quit or be fired, and the employee chooses the "quit" option, then the employee gets benefits regardless of any misconduct. We find that this is not the law.

As an initial matter, the opinion of the learned Administrative Law Judge carries weight with us, but so do the opinions of other Administrative Law Judges at Iowa Workforce. And we agree with the position taken by many other Administrative Law Judges of Iowa Workforce. For example, Administrative Law Judge Steve Wise has explained:

> The unemployment insurance rules state that when a claimant is compelled to resign when given the choice of resigning or being discharged, it is not considered a voluntary leaving. 871 IAC 24.26(21). In such a case, the separation is treated as a discharge and the question becomes whether the discharge was for misconduct.

Murray v. Dept of veteran's Affairs, 08A-UCFE-00011-SWT (3/18/08)(imposing disqualification for misconduct); *accord Miller v. Vendor's Unlimited*, 05A-UI-01997-S2T (2005)(ALJ **Scheetz** subjects case to misconduct analysis because "The claimant's separation was involuntary and must be analyzed as a termination."); *Sisson v. Mercy Hospital,* 04A-UI-10579-RT (2003)(ALJ **Renegar** writes "when she was given the choice of resigning or being discharged and this is not a voluntary leaving and is treated, at least for unemployment insurance benefit purposes, as a discharge. Therefore, disqualifying misconduct must be determined."); *Green v. Electric Pump, Inc.* 10A-UI-10034-VST (2010)(ALJ **Seeck** writes "Iowa law is clear that if an employee is given the choice of resigning or being terminated, this is not a voluntary leaving on the part of the employee. Accordingly, these cases are analyzed as a discharge for misconduct."); *Rick v. Cloverleaf Cold Storage*, 06A-UI-10030-NT (2006)(Judge **Nice** disqualifies based on misconduct where claimant given choice of quit or be fired); *Stokesbary v. IPC Int'l Corp,* 09A-UI-18400-JTT (2009)(ALJ **Timberland** writes "In analyzing quits in lieu of discharge, the administrative law judge considers whether the evidence establishes misconduct that would disqualify the claimant for unemployment insurance benefits."); *Edmond v. Tone Brothers,* 06A-UI-06958-ET (2006)(ALJ **Elder** writes "Under Iowa law, when a claimant resigns under those circumstances it is considered to be a discharge rather than a voluntary leaving. Therefore, the administrative law judge finds the claimant was discharged from his employment."); *McGuire v. Bank of the West,* 07A-UI-00643-HT (2007)(ALJ **Hendricksmeyer** disqualifies claimant on misconduct theory because "The claimant may have submitted a resignation but under the provisions of the above Administrative Code section, this is not a voluntary quit because continuing work was not available to her. She would have been discharged if she had not resigned. Therefore the determination must be whether she was discharged for misconduct."). We have unanimously reached this same conclusion ourselves. *Kelly v. Council Bluffs Catholic School System*, 10B UI-07245 (2010); *Meeks v. Waterloo,* 11B UI-11311 (2011).

In *Flesher v IDJS,* 372 N.W.2d 230 (Iowa 1985) a claimant resigned when given the choice to resign or be discharged. The employer there protested as a voluntary quit, but Workforce disqualified the claimant based on misconduct. The Supreme Court held that the agency had authority to raise the misconduct issue, and disqualified the Claimant on misconduct. While not saying so in so many words, *Flesher* strongly supports the conclusion that a resignation in lieu of discharge should be analyzed as a discharge, and that if misconduct appears a disqualification can be imposed.

This position is consistent with the literal meaning of the rule, and with the policy of the Employment Security Law. A careful reading of the rule establishes that where a Claimant is given the choice of quitting or being fired this is not a voluntary quit. True it says, in the general provision that "the following are reasons for a claimant leaving employment with good cause attributable to the employer." This, in isolation, sounds like a forced quit is a quit for good cause. But the specific rule says "this shall not be considered a voluntary leaving." We agree. It's just not a voluntary quit. So it certainly is not disqualifying *as a voluntary quit*. But this does not mean it cannot be disqualifying as a discharge. Indeed, the rules state that "[a] discharge is a termination of employment initiated by the employer." 871 IAC 24.1(113). This case matches this definition, and the case should be analyzed as a discharge under the literal terms of the rules.

Secondly, the record establishes that the claimant's separation was predicated on his failure to report an accident in the company truck. Yet, the record is void of any evidence relating the employer's policy regarding what an employee is required to do under such circumstances. As the Iowa Court of Appeals noted in *Baker v. Employment Appeal Board*, 551 N.W. 2d 646 (Iowa App. 1996), the administrative law judge has a heightened duty to develop the record from available evidence and testimony given the administrative law judge's presumed expertise. Since the record is incomplete, the Board must remand this matter for further development and the taking of additional evidence regarding the employer's policy or company rules for reporting accidents.

DECISION:

The decision of the administrative law judge dated May 19, 2011 is not vacated. This matter is remanded to an administrative law judge in the Unemployment Insurance Appeals Bureau, for further development of the record consistent with this decision, unless otherwise already addressed. The administrative law judge shall conduct a hearing following due notice, if necessary. If a hearing is held, then the administrative law judge shall issue a decision which provides the parties appeal rights.

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John A. Peno

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Monique F. Kuester

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Elizabeth L. Seiser

AMG/kk