

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FREDERICK DOMINGUEZ
Claimant

APPEAL NO. 08A-UI-06156-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARR-NUNN TRANSPORTATION INC
Employer

**OC: 06/08/08 R: 12
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Frederick Dominguez (claimant) appealed a representative's July 1, 2008 decision (reference 01) that concluded he was not 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 July 21, 2008. The claimant participated in the hearing. Aimee Hanson appeared on the employer's behalf. 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 June 19, 2007. He worked full time as a driver in the employer's over-the-road trucking business. His last day of work was June 1, 2008.

The claimant was supposed to have been on home time between loads but agreed to cover another driver's load, picked up in Illinois on May 30, for delivery in Georgia on June 2. On the afternoon of June 1 the claimant arrived at a truck stop in the locality in which he was scheduled to make the delivery the next day. He parked the truck in the secure truck parking area to begin his down time before he made the delivery the next day.

The claimant proceeded to walk to a strip mall a short distance from the truck stop, where he dined at a restaurant. He had about three glasses of wine with his dinner. He then left the restaurant and began walking back to the truck stop so he could get into his truck to sleep for the night. As he walked across a grassy area between the strip mall and the truck stop, a local law enforcement officer accosted and questioned him as to what he was doing. When the claimant attempted to explain, the officer arrested the claimant and pushed the claimant into the back of the patrol car. The claimant was then charged with public drunkenness and interfering

with government property, a charge apparently related to a belief that the claimant had damaged the patrol car. The claimant's bond was set sufficiently high that he was held in custody until his mother arrived with sufficient bond on June 6.

The claimant has pled not guilty to both charges. The claimant denied causing any intentional damage to the patrol car, and denied being drunk. The officer did not perform any field sobriety tests and no breath or blood alcohol tests were taken. The charges remain unresolved as of the date of the hearing in this case.

The employer learned of the claimant's detainment when he did not make the June 2 delivery and Ms. Hanson began making calls to hospitals and law enforcement in the delivery community area; on June 3 she spoke to someone at the local jail who informed her that the claimant was in custody and the charges pending against him. When the claimant was released on June 6 he contacted his local dispatcher who told him to go to the truck and wait for further instructions. The claimant did so, but when he later again spoke to the dispatcher, he learned that the employer had determined to release him from employment since he had been in custody and out of service since his arrest the evening of June 1. There had not been any prior disciplinary issues during the claimant's employment.

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; 96.5-2-a.

Rule 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 and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The representative's decision concluded that the claimant was not discharged but that he quit because he had been arrested and confined in jail. The cited rule further provides, "The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer . . . The claimant is deemed to have left if such claimant becomes incarcerated." 871 IAC 24.25(16) (Emphasis added.) A presumption is generally rebuttable with appropriate facts. Fed. Rules of Evidence § 301; Iowa Court Rules § 5.301. Even if being held in custody pending resolution of charges could be deemed "incarceration" within the meaning of the rule, the administrative law judge concludes that under the facts of this case, where the claimant has pled not guilty and the duration of the pre-bond custody was a matter of about five days, the claimant has rebutted any presumption that he voluntarily quit the employment. 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).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was his absence from work from June 2 until June 6. While this was an unexcused absence, it was at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, and was a good faith error in judgment or discretion. As to any reasoning on the part of the employer that it had to discharge the claimant given the nature of the pending charges, the employer has not established as fact the truth of the charges as filed, and the claimant has made a first-hand denial of the validity of such charges. The employer has not met its burden to show disqualifying 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.

DECISION:

The representative's July 1, 2008 decision (reference 01) is reversed. 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.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css