

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**THOMAS R BARNES**  
Claimant

**GRAVES CONSTRUCTION CO INC**  
Employer

**APPEAL 18A-UI-11812-AW-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/11/18**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2) – Discharge for Misconduct  
Iowa Admin r. 871-24.32 – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Thomas Barnes, Claimant, filed an appeal from the November 30, 2018 (reference 01) unemployment insurance decision that denied benefits because he voluntarily quit work with Graves Construction Co, Inc. for personal reasons. The parties were properly notified of the hearing. A telephone hearing was held on December 21, 2018 at 9:00 a.m. Claimant participated. Employer participated through Dan Graves, president. No exhibits were admitted.

**ISSUE:**

Whether claimant's separation was a discharge due to disqualifying job-related misconduct or a voluntary quit without good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a carpenter from April 30, 2018 until his employment with Graves Construction Co., Inc. ended on November 13, 2018. (Graves Testimony) Claimant's worksite was an hour and a half drive from his home. (Claimant Testimony)

On July 19, 2018, claimant sustained a work-related injury to his wrist. (Graves Testimony) A workers compensation claim was initiated. (Graves Testimony) Claimant was scheduled to have surgery on his wrist on October 31, 2018. (Graves Testimony) On October 31st, claimant declined to have the surgery stating he wanted a second opinion. (Claimant Testimony) Claimant continued working with restrictions put in place by his doctor. (Claimant Testimony) On November 6, 2018, claimant informed employer that he had aggravated his wrist injury and was leaving work to go to the emergency room. (Claimant Testimony) Claimant did not go to the emergency room. (Claimant Testimony) On November 7, 8, 9 and 12, 2018, claimant did not report to work and did not notify employer prior to the start of his shift that he would be absent. (Graves Testimony)

On November 13th, claimant reported to work. (Graves Testimony) Employer presented claimant with a restricted duty job offer for claimant to perform light-duty work at \$8.00 per hour

less than his regular wage. (Graves Testimony) The written offer had a place for claimant to sign to accept the offer and a place for claimant to sign to reject the offer. (Graves Testimony) Claimant asked for a copy of the form to review with an attorney. (Graves Testimony) Employer refused to provide a copy of the form unless claimant signed it. (Graves Testimony) When claimant refused to sign the form, employer told claimant that he had voluntarily quit his job. (Graves Testimony) Employer did not discharge claimant for absenteeism. (Graves Testimony)

Claimant had no prior disciplinary action. (Claimant Testimony) Claimant did not believe his job was in jeopardy. (Claimant Testimony) Claimant did not intend to quit his job. (Claimant Testimony) There was continuing work available to claimant. (Graves Testimony)

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

For the reasons that follow, the administrative law judge concludes the claimant did not voluntarily quit his employment but was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

Iowa Code § 96.5(1) provides: “An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.” 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). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Claimant had no intention of quitting his job. Claimant intended to continue his employment as evidenced by his driving an hour and a half to work on November 13, 2018. If claimant intended to quit his job, he would have resigned by calling employer on the telephone; claimant would not have driven three hours round trip to do it. Furthermore, employer testified that claimant's separation was not due to his absences from November 7th through 12th, but due to claimant's refusal to sign the restricted duty job offer. Claimant did not voluntarily quit; claimant was discharged.

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 disqualification shall continue 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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. 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." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. *Woods v. Iowa Dep't of Job Serv.* 327 N.W.2d 768, 771 (Iowa 1982). The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of

all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.* 367 N.W.2d 300 (Iowa Ct. App. 1985).

When claimant reported to work on November 13, 2018, employer informed claimant that he must sign a restricted duty job offer in order to continue his employment. The restricted duty job offer included an \$8.00 per hour reduction in pay. This scenario can be analyzed as either a discharge with a subsequent offer of employment or a discharge for insubordination (i.e. refusal to sign the offer form). Under either analysis, the result is the same. If claimant was not allowed to return to his job on November 13, 2018, then he was effectively discharged from his employment. The subsequent offer of employment is immaterial to the separation. In the alternative, claimant's refusal to sign the form was not insubordination, because claimant's desire to review the form with an attorney was reasonable. Claimant's refusal to sign the form was not misconduct. Claimant was discharged from his employment for no disqualifying reason. Employer has failed to meet its burden of proving disqualifying, job-related misconduct. Benefits are allowed provided claimant is otherwise eligible.

**DECISION:**

The November 30, 2018 (reference 01) unemployment insurance decision is reversed. Benefits are allowed provided claimant is otherwise eligible.

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Adrienne C. Williamson  
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Decision Dated and Mailed

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