IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

TYLER J TOMASZKIEWICZ Claimant **SEQUEL YOUTH SERVICES OF WOODWARD** Employer	**APPEAL 17A-UI-00166-SC-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 06/26/16** **Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

Sequel Youth Services of Woodward (employer) filed an appeal from the December 30, 2016 (reference 04) unemployment insurance decision that allowed benefits based upon the determination it failed to furnish sufficient evidence to show it discharged Tyler J. Tomaszkiewicz (claimant) for disqualifying misconduct. The parties were properly notified about the hearing. A telephone hearing was held on February 7, 2017. The claimant participated and was represented by Attorney Andrew Zbaracki. The employer participated through Human Resources Director Marcia Dodds. Claimant's Exhibit A was received. Employer's Exhibit 1 was received. Official notice was taken of the administrative record, specifically the fact-finding documents.

ISSUES:

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?
Has the claimant been overpaid unemployment insurance benefits?
Can the repayment of those benefits to the agency be waived?
Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed on a part-time as needed basis as an Overnight Youth Counselor beginning on August 5, 2016. When he interviewed for the position, the employer told him that he would need to attend base training which is a 40 hour training usually held Monday through Friday 9:00 a.m. to 5:00 p.m. of certain weeks. The claimant expressed concern about this as he was a full-time student. The interviewer told him that it would not be a problem as they could work something out.

The claimant was unable to attend the base training at the end of August due to school and was told it would not be a problem to attend at another time. At the beginning of November 2016, his supervisor notified him that another base training was scheduled for the last week of the month. The claimant told his supervisor he would not be able to attend that week due to class. He explained he had two tests that week and would not be able to miss the classes. He spoke with someone in Human Resources and asked if the training could be held during a week he was on break from school. The request was denied.

On November 14, 2016, the claimant contacted Human Resources Director Marcia Dodds about the situation. She asked when he had breaks in his class schedule that week. He told her that he had class from 8:00 a.m. to 9:00 p.m. She asked again if he had any breaks during classes. The claimant told her that he would not be at the training the last week of November and asked how that would affect his schedule. Dodds told the claimant he was being removed from the schedule and asked him to return his any keys in his possession. Dodds believed his employment had ended at this time.

The claimant continued to receive requests to cover shifts from his supervisors. He contacted Dodds in mid-December to tell her about the situation and asked if he was still employed. Dodds apologized for the inconvenience and did not answer his question. The parties have not had contact since that time.

The administrative record reflects that claimant has received unemployment benefits in the amount of $813.21, since filing a claim with an additional date of December 11, 2016, for the five weeks ending January 14, 2017. The administrative record also establishes that the employer did participate in the fact-finding interview.

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.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left his employment. *Irving v. Empl. App. Bd.*, 15-0104, 2016 WL 3125854, (Iowa June 3, 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It 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 there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

The claimant expressed an inability to attend training that was outside his normal work schedule due a conflict of which the employer was aware when he was hired. The claimant did not express an intention to end his employment. The employer then removed the claimant from the schedule and asked for his keys to be returned. The employer has not met its burden of proof to show that the claimant voluntarily left his employment. Therefore, the case will be analyzed as a discharge.

In an at-will employment environment 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, it incurs potential liability for unemployment insurance benefits related to that separation. 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 regulations define misconduct, stating:

> "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.

Iowa Admin. Code r. 871-24.32(1)a. 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).

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." 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 employer has mandatory training that is required for all employees. It offers the training during normal business hours, Monday through Friday from 9:00 a.m. to 5:00 p.m. The claimant told the employer at the time he was hired that he would not be able to attend that training while he was in classes. The employer hired him anyway to work on an as needed basis during the overnight shift. He was told they would be able to work out a training schedule. The claimant requested the training be held when he was on break, which was denied. The claimant's inability to attend training at the end of November 2016 is not misconduct given the agreement under which he was hired. The employer has not met its burden to establish that the claimant acted deliberately against its best interest or with recurrent negligence in violation of company policy, procedure, or prior warning. Accordingly, benefits are allowed.

As benefits are allowed, the issues of overpayment and repayment are moot and charges to the employer's account cannot be waived.

DECISION:

The December 30, 2016 (reference 04) unemployment insurance decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The issues of overpayment and repayment are moot and charges to the employer's account cannot be waived.

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Stephanie R. Callahan
Administrative Law Judge

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Decision Dated and Mailed

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