

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BRYAN J PRASKA**  
Claimant

**JUNG & PARTNERS LLC**  
**CRDN OF CENTRAL AND WESTERN IOWA**  
Employer

**APPEAL 15A-UI-03193-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/22/15**  
**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 March 12, 2015 (reference 01) unemployment insurance decision that denied benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on April 16, 2015. Claimant participated. Employer participated through owner Terese Jung and CSR field manager at all locations Tracie Bivens. Employer's Exhibit One was received. Claimant's Exhibit A was received. The administrative law judge took official notice of the administrative record, including fact-finding documents.

**ISSUE:**

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge 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 a salaried customer service representative (CSR) with benefits from March 2012 and was separated from employment on February 27, 2015 when he was discharged. He was hired to work in Des Moines. Bivens asked him on January 20, 2014 to move and transfer to the Omaha location. He said he would consider it and get back to her. On Friday, January 24, 2014, he told her he would consider moving to Omaha if he could move back to Iowa. She agreed and asked him to give it one year in Omaha and his position and pay would be held for him. On March 1, 2014, he moved to Omaha. On September 1, 2014, he spoke with Bivens and told her he wanted to return to Des Moines at the end of the year. She said that he would contact Jung. Jung lives in Omaha but does not micromanage Bivens. Bivens works from Des Moines and gives instructions to subordinates via e-mail. In a September 8 email from Bivens, she told claimant they would meet in person September 10. They agreed his last day in Omaha would be February 27 and he would start work in Iowa again on March 1, 2015; without a pay cut or other changes to the terms of hire when he had previously worked in Des Moines. He found an apartment and started the move back to Iowa in

September 2014, commuting to work in Omaha. On January 9, he met Bivens in the Des Moines office confirming information from their last meeting. Between January 19 and February 10, 2015, three new CSRs, Nicole, Jennifer and Mikaela, started in the Des Moines and Omaha offices. On February 27 claimant sent an email to Bivens confirming his move to the Des Moines office. Jung told him there were no open positions in Des Moines so he offered to stay in Omaha for a few weeks until a position opened. Jung told him there were no openings in Iowa except in the warehouse with a pay and benefits decrease of 39 percent.

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

For the reasons that follow, the administrative law judge concludes the claimant did not quit but was discharged from employment for no disqualifying reason.

Iowa Code § 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 § 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).

Because there was unclear communication between claimant and employer about the interpretation of both parties' statements about the status of the employment relationship; the issue must be resolved by an examination of witness credibility and burden of proof. Since most members of management are considerably more experienced in personnel issues and operate from a position of authority over a subordinate employee, it is reasonably implied that the ability to communicate clearly is extended to discussions about employment status. Bivens and Jung had vague recollection about dates and specifics of communication with claimant. Claimant had much more specific information from recollection and contemporaneous notes, thus is considered the more credible of the parties. Claimant's interpretation of the communication and action, or lack thereof, as a discharge was reasonable and the burden of proof falls to the employer.

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."

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. Inasmuch as claimant followed through on his long-term arrangements with Bivens to move back and work in the Des Moines office, the employer has not met the burden of proof to establish that claimant engaged in misconduct. This separation could also be viewed as a layoff due to a lack of work when the employer did not have work for him as arranged. Or if claimant were considered to have voluntarily quit the employment, benefits would be allowed due to Bivens' misrepresentation and the significant cut in pay and benefits. In any event, benefits are allowed.

**DECISION:**

The March 12, 2015 (reference 01) decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld shall be paid to claimant.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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