

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**CHRISTOPHER M HEWITT**  
Claimant

**APPEAL 15A-UI-04547-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OGDEN COMMUNITY SCHOOL DISTRICT**  
Employer

**OC: 03/22/15  
Claimant: Appellant (2)**

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Iowa Code § 96.5(1) – Voluntary Leaving  
Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 6, 2015, (reference 01) unemployment insurance decision that denies. The parties were properly notified about the hearing. A telephone hearing was held on June 29, 2015. Claimant participated and was represented by Gerald L. Hammond, Attorney at Law. Employer did not participate as Brad Jeremland did not answer the telephone when called to begin the hearing.

**ISSUES:**

Did the claimant voluntarily quit his employment without good cause attributable to the employer or was he discharged due to job-connected misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a special education teacher beginning on August, 11, 2014 through December 19, 2014 when he voluntarily quit in lieu of being discharged. The employer reported to the claimant only that he could not get along with some of the associates assigned to work with him and that at least one parent had complained. The employer told him they wanted him to voluntarily quit or they would pursue termination of his contract. Since the claimant was in his first year of a contract, he chose to voluntarily quit, despite the fact that he had broken no rules or regulations. If the employer had not asked him to resign, the claimant would not have voluntarily quit. Continued work was not available for the claimant.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes 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 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). Here the claimant was simply told that he would be discharged if he did not voluntarily quit. Under these circumstances his separation

from the employment relationship is not a voluntary quit. Such cases must be analyzed as a discharge from employment. *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992).

The evidence presented at the hearing does not establish any wrongdoing or job-connected misconduct on the part of the claimant. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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.” When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

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 did not voluntarily quit and the employer has not presented any evidence of job connected misconduct, the employer has not met the burden of proof to establish that claimant engaged in misconduct. Benefits are allowed.

**DECISION:**

The April 6, 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.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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