

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**DENNIS D HART
1314 – 9TH AVE SE
ALTOONA IA 50009**

**DES MOINES REGISTER & TRIBUNE
c/o TALX UCM SERVICES
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 05A-UI-05622-DT
OC: 04/17/05 R: 02
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

Dennis D. Hart (claimant) appealed a representative's May 19, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Des Moines Register & Tribune (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 7, 2005. The claimant participated in the hearing. Sheila Mason appeared on the employer's behalf. One other witness, Dottie Klootwyk, was available on behalf of the employer but did not testify. During the hearing, Employer's Exhibit One was entered into evidence. 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 October 27, 2003. He worked full time as district manager for circulation. On April 8, 2005, he tendered his resignation. His last day would have been May 5, 2005. He gave his notice because he had found a position with another employer. On April 20, 2005, the employer informed the claimant that it was accepting his resignation effective immediately. The employer's basis for accelerating the effective date of the separation was that the claimant had not returned from a week's vacation as originally planned.

The claimant had previously arranged to have the week of April 11 through April 17, 2005 as his week of vacation. When he turned in his resignation notice to his manager on April 8, 2005, he indicated that he was going to be in training in Chicago for his new job during his vacation time. He initially planned to be back for work on April 18, 2005. On April 17 or April 18, 2005, the claimant called his manager and indicated that he needed to take some additional time to finish his training, and that he wished to take his three floating holidays. The manager did not resist or object to the claimant's request when she spoke to him, and indicated that she would expect him back to work on April 21, 2005. She did post a new schedule showing the claimant off through April 20 and back on April 21, 2005. However, the manager then contacted Ms. Mason, the metro circulation director, and urged her to move up the effective date of the acceptance of the claimant's resignation. Ms. Mason left a message for the claimant on April 19, 2005, which he answered as he was returning home on April 20, 2005. Ms. Mason then told the claimant that he was not to return to work, that his resignation was accepted effective immediately. The claimant started his new job on May 5, 2005.

REASONING AND CONCLUSIONS OF LAW:

There are two separation incidents that must be reviewed in this case. The first created an issue of whether the claimant voluntarily quit, and if so, whether it was for a disqualifying reason.

Iowa Code section 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did voluntarily quit in order accept other employment. The claimant is not disqualified from receiving benefits as a result of this quit in the event of a future separation from employment, but the employer's account will not be charged as of May 5, 2005.

The next issue in this case is whether, for the time prior to the effective date of the claimant's quit, 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 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 section 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).

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 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.

871 IAC 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The sole reason cited by the employer for discharging the claimant is his failure to return for work as originally scheduled on April 18, 2005, but rather took the additional three days without actual approval and with only a day or two days notice. However, the claimant testified under oath that the manager had agreed to his being absent the additional three days and had not protested or resisted his request. No first-hand witness was available at the hearing to provide testimony to the contrary under oath and subject to cross-examination. The employer relies exclusively on the second-hand account from the claimant's manager; however, without that information being provided first-hand, the administrative law judge is unable to ascertain whether Ms. Mason might have misinterpreted or misunderstood the manager's report or whether the manager was credible. Under the circumstances, the administrative law judge finds the claimant's first-hand information more credible. Under the circumstances of this case, the claimant's behavior 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. The claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits for the period between the discharge and the date he was intending to quit.

DECISION:

The representative's May 19, 2005 decision (reference 01) is reversed. The claimant voluntarily quit for a non-disqualifying reason, to accept a new job, effective May 5, 2005. The employer's discharge of the claimant prior to the effective date of the quit was not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits if he is otherwise eligible. The employer is chargeable for any benefits paid for the period covering through the week ending May 7, 2005. The employer is not chargeable for any benefits after May 7, 2005.

ld/sc