

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

MICHAEL D BUTTERS

Claimant

APPEAL NO: 13A-UI-13690-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JC TOLAND PAINTING LLC

Employer

OC: 02/03/13

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Michael D. Butters (claimant) appealed a representative's December 5, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from JC Toland Painting, L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 31, 2014. The claimant participated in the hearing. Jeremy Toland appeared on the employer's behalf and presented testimony from two other witnesses, David Whanell and Steve Hebron. 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?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

After a prior period of employment with the employer, the claimant most recently started working for the employer on May 15, 2013. He worked full time as a painter. His last day of work was on or about October 28, 2013.

The claimant had been working on a number of projects for the employer at the Des Moines, Iowa airport. One of the projects was to paint a stairwell. He was working with foreman Whanell at the airport on October 27 and October 28. The airport's site supervisor had told them that he did not want them blocking off the stairway to do the painting during the day. On October 28 the two began to set up to do the stairwell, but was substantially blocking the stairway as Whanell felt this was the most effective way to complete the task. The site

supervisor approached them and told them to stop, telling them that if that was the way the stairwell needed to be done, it would have to be done after hours in the evening. Whanell agreed to come back in the evening and perform the work.

While the employer frequently had evening work available, the claimant had never done evening work as he was not available to do so for family reasons. Before leaving the site on the morning of October 28 he told Whanell that he would not be able to join him to return to the site that evening to perform the work. Believing that the work at the airport was done other than the evening work, on the late afternoon of October 28 he called Hebron, field superintendent, and also advised him that the work at the airport was now in the evening and he could not perform work in the evening. He asked Hebron if there were any other open jobs, and Hebron responded that the only work he had available at that time were other evening jobs.

The claimant believed that the employer would contact him when other daytime work became available. He also understood from the conversation with Hebron that he should turn in his security badge for the airport. He did so, and on October 30 he brought his receipt for his badge into the employer's office. Nothing was said to him then as to there being any other daytime work available, so he assumed the employer would contact him at such point as additional daytime work would become available. As the claimant did not get any further call from the employer, he assumed he was laid off for the season and as of November 3, 2013 he reactivated with an additional claim his previously established claim for unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged or laid off but that he voluntarily quit. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge or layoff for purposes of unemployment insurance. 871 IAC 24.26(21). *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992).

The issue in this case is then whether 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 or even had any other choice but 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 § 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).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was that it did not have any more daytime work to provide the claimant. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute; he was in effect laid off for lack of work. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's December 5, 2013 decision (reference 01) is reversed. The claimant did not voluntarily quit; the employer discharged or laid off the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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