

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL W EBY
Claimant

APPEAL NO: 09A-UI-02672-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHOLESALE FEEDS INC
Employer

OC: 01/18/09
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Wholesale Feeds, Inc. (employer) appealed a representative's February 10, 2009 decision (reference 01) that concluded Daniel W. Eby (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 16, 2009. The claimant participated in the hearing and was represented by A. J. Thomas, attorney at law. Drew Smith appeared on the employer's behalf and presented testimony from one other witness, Joe Ward. Four other witnesses, Dustin Vroegh, Richard Stevenson, Dennis Schnitkoweit, and Brian Haerther, were available but did not testify. Based on the evidence, the arguments of the parties, a review of the law, and assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, 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 June 6, 2005. He worked full time as accounts payable and payroll manager. His last day of work was January 16, 2009.

The employer's owner and chief executive officer, a Mr. Randy Brunson, had been having some concerns since approximately August 2008 regarding the claimant's application of the employer's vacation policy as it applied to payroll. The claimant was required to submit a spreadsheet each pay period to Mr. Brunson showing the pay calculations, either in person, or if Mr. Brunson was out of town, by email. There was a pay period which was to be submitted on December 29 for distribution on December 31. Mr. Brunson was out of town. The employer's payroll is broken down between two affiliate companies, the feed side and the trucking side. The claimant clearly submitted the spreadsheet for the feed side to Mr. Brunson by email on December 29. He testified that he also emailed the spread sheet for the trucking side. The

employer asserted that email records did not show the transmission of a spreadsheet for the trucking side. Mr. Brunson did not participate in the hearing, so there was no first-hand testimony that he did not receive a spreadsheet from the claimant for the trucking side of the business.

Mr. Brunson returned to the employer business site on or about January 13, 2009. The claimant soon became aware that Mr. Brunson was questioning the claimant's payment of vacation or holiday pay to some employees on the December 31 payroll where the employee's supervisor had authorized the payment of vacation or holiday pay even though the employee was not technically entitled to that payment under the employer's policies. On January 16 the claimant approached Mr. Smith, the chief financial officer. The claimant inquired as to whether he was not trusted any longer and became very upset. He ultimately suggested to Mr. Smith that it might be best if he went home for the rest of the day, and Mr. Smith agreed. As a result the claimant left the facility before the end of the regular workday, but reiterated to Mr. Smith that he was not quitting.

On January 17 Mr. Smith called the claimant and told him not to return to work with the employer. The reason given was failing to follow the prescribed procedures for payroll approval.

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 but that he quit by leaving before the end of the regular workday on January 16. 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 for purposes of unemployment insurance. 871 IAC 24.26(21).

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 failure to follow the prescribed procedures for payroll approval. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Further, there is no current act of misconduct as required to establish work-connected misconduct. 871 IAC 24.32(8); Greene v. Employment Appeal Board, 426 N.W.2d 659 (Iowa App. 1988). Even if there was an omission in the claimant's submission of the payroll spreadsheet on December 29, this was almost three weeks prior to the employer's discharge of the claimant. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's February 10, 2009 decision (reference 01) is affirmed. The claimant did not voluntarily quit and the employer did discharge 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

ld/pjs