

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BEN M MAIER
Claimant

HTH COMPANIES INC
Employer

APPEAL 16A-UI-06440-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/10/16
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 7, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit work after being reprimanded by his employer. The parties were properly notified of the hearing. A telephone hearing was held on June 23, 2016. The claimant, Ben M. Maier, participated. The employer, HTH Companies, Inc., participated through Raechel Garmer, payroll; Kevin Heiskell, project regional manager—mechanical manager; and Adam Wiese, supervisor.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the 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 millwright worker from October 19, 2015, until this employment ended on May 17, 2016.

On claimant's final day of work, he had a conflict with a coworker. Claimant alleged this coworker criticized him and said negative things about him in front of coworkers. Claimant went up to Wiese and asked if he could leave, as he was concerned he would become violent if he remained at work with the coworker. Initially, Wiese encouraged claimant to stay at work and explained that the coworker was working on a different project from claimant. Claimant then began kicking a box and punching insulation. Wiese asked him what was going on, and claimant began rambling about being angry and irritated with his coworker. Wiese told claimant to focus on completing his work, and claimant replied that he would rather leave before he got into an altercation with his coworker. Wiese told him that this was not the appropriate time or place for a confrontation. Claimant again asked to go home. Wiese told claimant that if he went home, he should stay home. Claimant asked if he was fired, and Wiese replied that claimant

could either stay and have a job or leave and not come back to work. Claimant left, and he never contacted Wiese or reported back to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily quit without good cause attributable to the employer. Benefits are withheld.

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. 871-24.25(6) and (27) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code § 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(6) The claimant left as a result of an inability to work with other employees.

(27) The claimant left rather than perform the assigned work as instructed.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). In this case, claimant walked off his job after being asked to remain and work through a conflict with one of his coworkers. Claimant was not required to work directly with this coworker that day. The record does not show any evidence that claimant remaining at work would have placed him in danger or would have been intolerable. Claimant's decision to leave his employment was without good cause attributable to his employer.

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). Claimant demonstrated an intent to end his employment relationship when, after being told that if he left work he would not be employed, he left work. Claimant made no effort to reach out to the employer after his final day and return to work. The claimant's decision to quit because he was angry with one of his coworkers was not for a good cause reason attributable to the employer. Benefits are withheld.

Claimant asserts he did not quit but was discharged from his employment. Therefore, this case will now be analyzed as a discharge from employment.

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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

Claimant was instructed to remain at work after he asked to go home. Claimant continued to ignore this instruction and persist in requesting to leave. Additionally, he began punching and kicking work materials. Claimant's refusal to follow the reasonable instruction to remain working and not leave his shift, combined with his violent behavior and his persistent departure requests after being told no amount to insubordination and disqualifying misconduct.

DECISION:

The June 7, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant separated from his employment without good cause attributable to his employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Elizabeth Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/pjs