

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHAD A EVANS
Claimant

APPEAL 16R-UI-09969-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LAJAMES COLLEGE/HAIRSTYLING INC
Employer

OC: 06/05/16
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin. Code r. 871-24.26(21) – Compelled to Resign from Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 22, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant tendered a resignation from employment that was accepted by his employer. The parties were properly notified of the hearing. A telephone hearing was held on September 30, 2016. The claimant, Chad A. Evans, participated and was represented by Matthew Glasson, attorney at law. The employer, LaJames College of Hairstyling, Inc., did not answer when called at the telephone number it registered for the hearing and did not participate.

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, most recently as a massage therapy educator, from September 2015 until June 4, 2016, when he was discharged. On June 4, claimant was invited into the office by Tracy LaDage, director of the Cedar Rapids location, and was told that the employer had found another employee to fill his position and he was no longer needed. LaDage also told claimant that he had verbally resigned at some point. Claimant was asked to fill out an exit sheet and he declined to do so.

Claimant denies verbally resigning from his employment, either on June 4 or on any earlier date. Claimant does not know why LaDage said that he verbally resigned. Claimant had never been informed of any misconduct or challenges he was having as an instructor. Claimant did not have any intent to leave his job. Claimant speculated that the end of his employment was based on another situation involving claimant purchasing a car from the company, which created some dissonance.

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. Benefits are allowed

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.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989); see also Iowa Admin. Code r. 871-24.25(35). 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). In this case, claimant gave unrefuted testimony that he had no intention of ending his employment. Rather, he was called into the office and informed that his position had been filled. Claimant did not complete the exit paperwork offered to him by the employer. The record does not contain any evidence that claimant's end of employment was voluntary. Therefore, the administrative law judge determines this separation was a discharge and the employer carries the burden of proof to establish disqualifying misconduct.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established.

In an at-will employment environment 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, it incurs potential liability for unemployment insurance benefits related to that separation. Here, the employer did not answer when called at the number it registered for the hearing, and it did not submit any written documentation in lieu of participation in the hearing. There is no evidence in the record that would support a finding that claimant was discharged for disqualifying misconduct. Benefits are allowed.

DECISION:

The June 22, 2016, (reference 01) unemployment insurance decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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