

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RON S HAGEN

Claimant

APPEAL NO: 13A-UI-04384-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BIG RIVER PACKAGING INC

Employer

OC: 03/10/13

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Ron S. Hagen (claimant) appealed a representative's April 4, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Big River Packaging, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 21, 2013. The claimant participated in the hearing. John Huling appeared on the employer's behalf. 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:

The claimant started working for the employer on or about March 15, 2008. He worked full time as a picker in the shipping department. His last day of work was December 14, 2012. The employer asserted that the claimant voluntarily quit by walking off the job during a performance discussion.

The claimant's normal work schedule was to work from 6:00 a.m. to 2:00 p.m., although overtime could be required. The employer's vice president/plant manager, Huling, had previously had discussions with the claimant as to how it was that he could spend the same amount of time picking orders regardless of the number of orders, so that on days with few orders it would take the claimant as much time as days with a greater number of orders; the claimant had responded that he and his coworkers would pace themselves when they could to avoid injury.

On December 14 at about 12:30 p.m. the claimant's immediate supervisor had indicated to the claimant and the rest of the pickers that they should try to finish about 15 minutes before 2:00 p.m. so that they could sweep their work area. The claimant had responded then that he did not know if that was going to work for him because that day he was also assisting another employee picking their orders; the supervisor acknowledged that the claimant might not be able to get to the sweeping.

The claimant did not get to the sweeping, and he was getting ready to leave the facility at about 2:15 p.m. when Huling approached him. Huling started again talking about how the claimant seemed to be avoiding work and worked slower on days where there was less work. The claimant felt Huling was agitated; he responded to Huling that he did not want to have an argument, but that they could have a further conversation on the matter when Huling calmed down. He proceeded to move to leave, and Huling continued to indicate they needed to have the conversation right then. The claimant again stated that he did not wish to have an argument and that they could discuss the matter later, and that it was already 2:15 p.m.; he proceeded to walk away to leave. Huling then told him, "Don't come back Monday." The claimant understood that he was discharged, returned to pick up some of his personal items, and then left.

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 walking away from the discussion Huling wished to have with him regarding his performance. The claimant clearly indicated he was not intending on quitting, but that he was willing to have the conversation with Huling at a later time. *Peck v. Employment Appeal Board*, 492 N.W.2d 438 (Iowa App. 1992). 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); *Peck*, supra.

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 the employer perceived that the claimant's refusal to stay and discuss the performance issue was insubordination. Under the circumstances of this case, the claimant's declining to stay and discuss the performance issue after he was done with his regular duties for the day 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. *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa App. 1985). 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, and the claimant is not disqualified from benefits.

DECISION:

The representative's April 4, 2013 decision (reference 01) is reversed. 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