IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

MIKE DOPPENBERG
Claimant

BEEF AND BACON DRIVE INC
Employer

APPEAL NO. 18A-UI-01350-S1-T

ADMINISTRATIVE LAW JUDGE DECISION

OC: 12/31/17
Claimant: Respondent (1)

Section 96.5-1 - Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Beef and Bacon Drive (employer) appealed a representative's January 26, 2017, decision (reference 01) that concluded Mike Doppenberg (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 22, 2018. The claimant participated personally. The employer was represented by Galen Vande Vegte, co-owner of Hillside Ham, and participated by Glenn Vande Vegte, co-owner of Beef and Bacon Drive. The claimant offered and Exhibit A was received into evidence. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 10, 2016, as a full-time employee working at Beef and Bacon Drive and Hillside Ham. Both employers shared the claimant's wages. Neither employer had a handbook or issued the claimant any warnings. The owner of Beef and Bacon Drive was a silent partner. He allowed his brother, the owner of Hillside Ham, to manage the employees.

The claimant and his wife both worked for the companies. On December 18, 2017, the managing brother sent a text to the claimant's wife at about 6:21 a.m. asking for a supply list. By 8:36 a.m. the claimant sent a text to the managing brother expressing concern about being ignored and terminated. The managing brother threatened to start the claimant's wife on a different pay scale. Then he said, "I think it would be best if we parted ways". The wife thought she has been terminated.

She continued to text the managing brother. The wife thanked the managing brother for the "family xmas present". She told him that the kids are worried and said, "Give us at least a month". The managing brother responds, "That's a hard call the way you acted today see what you can get find". (sic) The wife asks, "and Mike?" The managing brother does not respond to the wife again. The couple thought they were both terminated.

On December 19, 2017, the claimant sent a text to the managing brother, "I'll be stopping to pick up more of our stuff ok". The managing brother replied, "That's fine". The claimant assumed there was no more work available for him.

The claimant filed for unemployment insurance benefits with an effective date of December 31, 2017. The employer provided the name and number of Glenn Vande Vegte as the person who would participate in the fact-finding interview on January 24, 2018. The fact finder called Mr. Vande Vegte but he was not available. The fact finder left a voice message with the fact finder's name, number, and the employer's appeal rights. The employer did respond to the message but the interview had been completed. The employer had provided some documents for the fact finding interview. The employer did not identify the dates or submit the specific rule or policy that the claimant violated which caused the separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant did not voluntarily quit work.

Iowa Code section 96.5(1) provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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.

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). The claimant had no intention of leaving work without the words of the managing brother. The separation must be analyzed as involuntary.

The administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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 disqualification shall continue 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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's January 26, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

_____
Beth A. Scheetz
Administrative Law Judge

_____
Decision Dated and Mailed

bas/rvs