

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALEX HOVEY
Claimant

GOLD EAGLE COOPERATIVE
Employer

APPEAL 20A-UI-05692-HP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Claimant Alex Hovey filed an appeal from a June 8, 2020 (reference 01) unemployment insurance decision that denied benefits based on a disqualifying reason. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for July 2, 2020. At the time of the hearing Hovey appeared and testified. Jon Zwiefel appeared and testified on behalf of Gold Eagle Cooperative. ("Gold Eagle"). Exhibits 1 through 4 were admitted into the record. I took administrative notice of Hovey's unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUES:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?
Was the Claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Hovey commenced his employment as a full-time grain handler/agronomist with Gold Eagle on April 25, 2016. In the spring of the year Hovey was responsible for operating a machine sprayer to spray fertilizer and chemicals onto fields. The spring of the year is a very busy season. The last week Hovey worked for Gold Eagle he worked 95 hours. Jon Zwiefel was his immediate supervisor.

The evening of April 24, 2020, Hovey told Zwiefel he had not been taking his medication because he was working so many hours. Zwiefel responded Hovey could drink a beer and he would be fine. Zwiefel testified this was the first time Hovey told him he was taking medication.

On April 25, 2020, Hovey went to work. Hovey was struggling with depression and anxiety and he could not concentrate. He told Zwiefel he could not handle operating the sprayer machine anymore. Zwiefel told Hovey to calm down and to go home. Zwiefel did not tell Hovey to report to work the next day, Sunday. At that time Gold Eagle was operating seven days per week.

On April 26, 2020, Hovey slept in until noon. He could see the Gold Eagle business from his home. Zwiefel did not call Hovey that day. Hovey called the head agronomist, Boone Morgan,

and told him what had happened. Morgan told Hovey to go to work on Monday, the next day. Morgan is not Hovey's supervisor.

On April 27, 2020, Hovey went to work. Zwiefel called him into his office and asked him why he did not come to work the day before. Hovey responded he did not think he had to report to work. Zwiefel responded he did not believe Hovey because he could see Hovey in his driveway on Sunday while Zwiefel was working. Zwiefel terminated Hovey for refusing to operate the sprayer machine and for being a no call, no show on Sunday, April 26, 2020. Zwiefel collected Hovey's keys and equipment. Hovey collected his belongings and left.

Lisa Mericle with human resources called Hovey and asked him to come in to sign a separation notice, Exhibit 1. The separation notice noted Hovey had been terminated for unacceptable performance and noted "refused to do job asked." (Ex. 1) Hovey signed the notice on April 28, 2020.

Zwiefel testified he did not terminate Hovey for violating any policy listed in Exhibits 2 or 3. He said he terminated Hovey for refusing to operate the machine sprayer and for failing to show up for work on April 26, 2020.

In July 2019, Hovey's medical provider prescribed medication for him for anxiety, depression and stress. Hovey testified he took the medication until business became busy at Gold Eagle in 2020. Hovey discontinued his medication on his own without consulting his medical provider.

Hovey had never been disciplined by Gold Eagle before April 27, 2020. In 2019 Hovey told Zwiefel he was having a problem and he did not want to run the machine sprayer. Zwiefel discussed the situation with Hovey and Hovey agreed to operate the machine. Zwiefel did not tell Hovey he would be discharged if he refused to operate the machine sprayer in 2019 or at any time prior to April 27, 2020.

Hovey did not request an accommodation from Gold Eagle for anxiety or depression when he was working. Zwiefel testified he did not know Hovey was taking any medication before April 24, 2020. Hovey did not provide Gold Eagle with any statement from a medical provider documenting his medical conditions.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. *Id.* 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *See Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). 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. *See* 871 IAC 24.25.

Iowa Code section 96.5(1) provides an individual "shall be disqualified for benefits, regardless of the source of the individual's wage credits: . . . If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department." The Iowa Supreme Court has held a "voluntary quit" means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer." *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989). A voluntary quit requires "an intention to

terminate the employment relationship accompanied by an overt act carrying out the intent.” *Peck v. Emp’t Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). “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). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant’s departure from employment was voluntary. *Irving v. Emp’t Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016).

Zwiefel testified he discharged Hovey because he did not report to work on April 26, 2020, a Sunday. Zwiefel did not tell Hovey to report to work that day or call him. Hovey had not missed three days of work without giving notice. 871 Iowa Administrative Code 24.25(4) 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 following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

24.25(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

I do not find Hovey voluntarily quit his employment when he did not show up for work on April 26, 2020.

871 Iowa Administrative Code 24.32(1)a, defines the term “misconduct” 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 Iowa Legislature. *Huntoon v. Iowa Dep’t of Job Serv.*, 275 N.W.2d 445, 558 (Iowa 1979).

871 Iowa Administrative Code 24.32(4) also provides,

Report required. The claimant’s statement and 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 cases where a

suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

871 Iowa Administrative Code 24.32(7) and (8) provide:

24.32(7) *Excessive unexcused absenteeism.* Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer

24.32(8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer bears the burden of proving the employee engaged in disqualifying misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 11 (Iowa 1982) The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262, 264 (Iowa Ct. App. 1984).

I find Gold Eagle discharged Hovey. 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 Dep't of Job Serv.*, 351 N.W.2d 806, 808 (Iowa Ct. App. 1984) The definition of misconduct in the administrative rule focuses on deliberate, intentional, or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* at 808-09. Negligence does not constitute misconduct unless it is recurrent in nature; a single act is not disqualifying unless it is indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986) Additionally, poor work performance is not misconduct in the absence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211, 213 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 666-69 (Iowa 2000) What constitutes misconduct justifying termination of an employee and what misconduct warrants a denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988) Instances of poor judgment are not misconduct. *Richers v. Iowa Dep't of Job Serv.*, 479 N.W.2d 308, 312 (Iowa 1991); *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 555 (Iowa Ct. App. 1986).

When Hovey told Zwiefel he could not tolerate running the machine sprayer on April 25, 2020 he did not warn Hovey he would be terminated if he refused to operate the sprayer. Zwiefel told Hovey to calm down and to go home. Zwiefel did not instruct Hovey to return to work on April 26, 2020, or call him when he did not come to work that day. Hovey had been working seven days a week and slept in that morning. The next day Zwiefel terminated Hovey because Hovey had not shown up for work on April 26, 2020, or called in to report he was not coming in and because he had refused to operate the machine sprayer. I do not find Gold Eagle has established Hovey engaged in substantial, deliberate, or willful wrongdoing in violation of a company policy, procedure, or prior warning. Gold Eagle had the right to terminate Hovey, but his conduct was

not serious or substantial enough to warrant a denial of unemployment benefits. As such, benefits are allowed, provided Hovey is otherwise eligible.

DECISION:

The June 8, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is reversed in favor of the claimant/appellant. Benefits are allowed, provided the claimant is otherwise eligible.



Heather L. Palmer
Administrative Law Judge
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July 15, 2020
Decision Dated and Mailed

hlp/sam