

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NOELLE L LUDWIG
Claimant

APPEAL NO: 11A-UI-03992-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DANIEL R ROEDER
Employer

OC: 02/20/11

Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Daniel R. Roeder (employer) appealed a representative's March 21, 2011 decision (reference 01) that concluded Noelle L. Ludwig (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 21, 2011. The claimant participated in the hearing. Daniel Roeder appeared on the employer's behalf and presented testimony from one other witness, June Knop. 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?

FINDINGS OF FACT:

After a prior period of part-time seasonal employment with the employer in the fall of 2009, the claimant resumed working for the employer on September 3, 2010. He was working full-time hours as a grain cart worker in the employer's farming operation. That work went through about the end of November.

He had expressed to the employer a desire to stay on in a more permanent full-time capacity, and the employer did keep him on after the end of the harvest season. On or about December 12 the employer considered the claimant to have become a full-time livestock hand. The claimant was not aware that this is what the employer considered his permanent position to be, but believed he was only filling in on a temporary basis; the position into which he had been looking to be placed was doing full-time work in the shop and other field work in the spring, that he might still have some layoff time during the winter, but would be recalled at least for spring field work.

The claimant's last day of actual work was February 15. After that date he became ill and was absent from work. The employer believed the claimant was calling in absences because he did not like the work and wanted to quit. The employer was further concerned because prior to February 15 there had been days the claimant had not worked a full shift, which the employer also believed was due to the claimant not liking the work and wanting to quit; however, the claimant had left early on those days because his foreman had told him that there was nothing for him to do and that he should go home.

Because of the employer's concerns, the employer scheduled a meeting with the claimant on February 21 to discuss expectations. The claimant acknowledged that he had not been expecting to work with livestock and did not like to work with livestock, admitting that he preferred field work. The employer then expressed to the claimant that it did not appear that things were working out for the claimant to be a permanent full-time employee. The employer inquired what the claimant would do in lieu of his employment with the employer, and the claimant responded he supposed he would go into town and try to find a full-time job. The employer replied by wishing the claimant good luck, and the meeting, and the employment, ended.

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 stopping reporting for work after February 15 and admitting that he preferred field work to livestock work. The claimant was absent because he was ill; further, an expression that an employee prefers one type of work over another is not tantamount to quitting. The claimant did not express a decision to quit his employment. 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).

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 the claimant's lack of interest in the livestock work as compared to the field work. While the employer may have had a good business reason for ending the employment, it 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 March 21, 2011 decision (reference 01) is affirmed. 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