

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DAN FARMER
Claimant

CHAPMAN ELECTRIC INC.
Employer

APPEAL 21A-UI-24223-ED-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/19/21
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 19, 2021 unemployment insurance decision that denied benefits based on claimant having voluntarily quit employment without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on December 22, 2021. The claimant, Dan Farmer participated personally through his attorney Danielle Ellingson. The employer, Chapman Electric Inc. participated through David Chapman.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has been employed by the employer full time since August 23, 2018. On Friday September 10, 2021 claimant was assigned to work on a project at Waterloo Processing. At the end of the day claimant called Mr. Chapman complaining about safety and health concerns at the job site. Specifically claimant claimed that the job site needed a permit, and that it was illegal for claimant to be working there without the supervision of a fully qualified electrician. Mr. Chapman told him that no permit was needed, and that he was fully qualified to do the tasks that were being asked of him. Mr. Chapman admits that he later found out a permit was required for that project, which he did not have. Mr. Chapman told claimant to stay home and hung up the phone. Claimant checked the scheduling app on his phone on Monday and found that he was scheduled to be off. On Tuesday he checked again only to find that he had been locked out of the scheduling app and could no longer access assignments. A week or so later Mr. Chapman emailed claimant asking for the return of any company owned tools or equipment that he had.

For the reasons that follow, the administrative law judge concludes as follows:

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 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:

- (4) 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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

First it must be determined whether claimant quit or was discharged from employment. 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). 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). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Claimant never took an overt act and had no intention to end the employment relationship. Claimant checked the schedule as was the normal operating procedure. Claimant testified credibly that he was scheduled off on the following Monday, and then locked out of the T-Sheet scheduling system on Tuesday. Claimant's efforts to return to work show an intent to remain employed. Claimant did not voluntarily quit his employment.

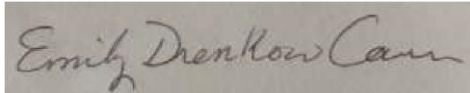
What constitutes misconduct justifying termination of employment and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. In order to justify denial of benefits the misconduct must be substantial. Disqualifying misconduct is conduct evincing such willful or wanton disregard of an employer's interest.

The employer does not accuse the claimant of committing any disqualifying misconduct. The employer took the claimant off the schedule and locked him out of the ability to get further assignments.

The administrative law judge concludes that the claimant's employment was terminated but not for benefit disqualifying misconduct. Benefits are allowed.

DECISION:

The October 19, 2021 unemployment insurance decision reversed. The claimant was discharged from employment but not for job related disqualifying misconduct.



Emily Drenkow Carr
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

January 26th, 2022
Decision Dated and Mailed

ed/rs