

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIEL J SCHWARTZ
Claimant

APPEAL 18A-UI-09531-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOB BROWN CHEVROLET
Employer

**OC: 08/19/18
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.5(2) – Discharge for Misconduct
Iowa Admin Code r. 871-24.25 – Voluntary Quit Without Good Cause
Iowa Admin Code r. 871-24.32 – Discharge for Misconduct

STATEMENT OF THE CASE:

Daniel Schwartz, Claimant, filed an appeal from the September 6, 2018, (reference 01) unemployment insurance decision that denied benefits because he voluntarily quit work with Bob Brown Chevrolet when he failed to report to work for three days in a row and did not notify his employer. The parties were properly notified of the hearing. A telephone hearing was held on October 1, 2018 at 1:00 p.m. Claimant participated. Employer did not participate. Claimant's Exhibit A was admitted.

ISSUE:

Whether Claimant's separation was a discharge for disqualifying job-related misconduct or a voluntary quit without good cause attributable to the employer.

FINDINGS OF FACT:

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's testimony: Claimant was employed full-time as a Sales Representative from July 5, 2018 until his employment ended on August 10, 2018. Claimant's direct supervisor was Robert Magee, Sales Manager.

While at work on August 6, 2018, claimant became ill. Claimant's supervisor sent him home for the day. Claimant's supervisor told claimant to email him if claimant could not attend work the following day. Claimant was scheduled to work August 7, 2018, August 9, 2018, August 10, 2018 and August 11, 2018 but did not report to work any of those days due to illness. Claimant emailed his supervisor each day before his shift was scheduled to begin to report that he would not be at work. Claimant was excused by his doctor from returning to work from August 7, 2018 until August 13, 2018. Claimant told his supervisor that he had doctor's excuses and would provide them when he returned to work. Claimant received no reply from his supervisor.

On August 11, 2018, claimant received a letter from employer's human resources department dated August 10, 2018 stating that claimant's benefits were no longer active because claimant's employment had been terminated. The letter did not state a reason for termination. Claimant had no prior warnings for absences or tardiness. Claimant did not know his job was in jeopardy. Claimant did not intend to quit his job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not voluntarily quit his job; claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

Iowa Code section 96.5(1)(d) 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury, or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25(35) 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 employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- a. obtain the advice of a licensed and practicing physician;
- b. Obtain certification of release of work from a licenses and practicing physician;
- c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- d. fully recover so that the claimant could perform all of the duties of the job.

A voluntary quitting 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 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); *Peck v.*

Emp't Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer. Iowa Code § 96.6(2).

Claimant had no intention of terminating his employment relationship with Bob Brown Chevrolet. Furthermore, claimant was absent from his employment due to a non-work-related illness, obtained the advice of a physician, notified his employer of his absences and provided updates to his employer regarding his absence from work. Claimant did not return to his employer to offer his services when he recovered and was released for work, because he had already been terminated. The separation was not a voluntary quit; it was a discharge.

Iowa Code section 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 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), (7) provides:

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.

(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.

This definition of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee*, 616 N.W.2d at 665. Absences due to properly reported illness or injury cannot constitute job misconduct because they are not volitional. *Cosper*, 321 N.W.2d at 6.

Employer gave no reason for claimant's termination or warning that claimant's termination was imminent. To the extent that claimant's termination was due to his absences from August 6th through August 10th, those absences were due to illness, were properly reported and, thus, are excused. The employer has not established a disqualifying reason for termination. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The September 6, 2018, (reference 01) unemployment insurance decision is reversed. Benefits are allowed if the claimant is otherwise eligible.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/rvs