

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL F ANDERSON**  
Claimant

**APPEAL NO. 09A-UI-07813-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCOTT MELVIN TRANSPORT I**  
Employer

**Original Claim: 04/05/09  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Michael Anderson (claimant) appealed a representative's May 20, 2009 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Scott Melvin Transport (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 15, 2009. The claimant participated personally. The employer participated by Scott Melvin, Owner.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on August 7, 2008, as a full-time over-the-road truck driver. On March 7, 2009, the claimant returned his truck to the owner and cleaned out all his belongings. The claimant was to go to the doctor for testing related to headaches. The claimant was fearful he would not survive, because he had a family history of brain tumors. The claimant notified the employer of his appointment and the employer told the claimant to take all the time he needed.

On March 10, 2009, the claimant told the dispatcher he could not work on March 11, 2009, because he was not well. On March 16, 2009, the claimant returned and told the employer he felt well enough to work. The employer told the claimant there was no work for him. The employer thought the claimant voluntarily quit work when he did not appear.

**REASONING AND CONCLUSIONS OF LAW:**

The first issue is whether the claimant voluntarily quit without good cause attributable to the employer. For the following reasons, the administrative law judge concludes he did not.

Iowa Code section 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.

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 to terminate his employment. The claimant's separation must be analyzed as an involuntary termination.

The issue becomes whether the claimant was discharged for misconduct. For the following reasons, the administrative law judge concludes he was not.

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 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.

871 IAC 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.

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.

**DECISION:**

The representative's May 20, 2009 decision (reference 02) is reversed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/kjw