

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER D WHITE
Claimant

APPEAL NO. 07A-UI-06017-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CONTINUUM HEALTH CARE SERVICES
Employer

**OC: 05/20/07 R: 01
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Christopher D. White filed a timely appeal from an unemployment insurance decision dated June 11, 2007, reference 01, that disqualified him for benefits following his separation from employment with Continuum Health Care Services. After due notice was issued, a telephone hearing was held July 24, 2007 with Mr. White participating. Tim Mortenson participated for the employer. Claimant's Exhibit A was admitted into evidence.

ISSUES:

Was the claimant discharged for misconduct in connection with his employment?

Did the claimant voluntarily leave employment without good cause attributable to his employer?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Christopher D. White was employed as an administrator by Continuum Health Care Services from September 2006 until May 22, 2007. He was a full-time employee. Mr. White requested a medical leave of absence to deal with depression. Tim Mortenson denied the request. Mr. Mortenson stated further that he considered that Mr. White had voluntarily resigned because he had removed his personal effects, including his state license, from the facility prior to requesting the leave of absence. Mr. White advised Mr. Mortenson that he had not intended to resign, but Mr. Mortenson would not allow him to continue working.

REASONING AND CONCLUSIONS OF LAW:

The first step in analyzing this evidence is to characterize the separation. The claimant argued that it was a discharge while the employer asserted that it was a voluntary quit. In order to find a voluntary quit, the administrative law judge must find that the claimant had the intention of severing the employment relationship and carried out some act in furtherance of that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The parties agree

that Mr. White never stated orally or in writing that he intended to resign. In fact, the evidence persuades the administrative law judge that he specifically denied any intent to resign in his conversations with Mr. Mortenson. The employer relies upon the claimant's removal of his personal effects, including his state license, to justify his conclusion of a voluntary quit. The administrative law judge concludes that the denial of the intention to quit outweighs the claimant's removal of personal effects, an act capable of several interpretations. The separation is better characterized as a discharge initiated by the employer.

The remaining question is whether the evidence establishes that the discharge was for misconduct in connection with the employment.

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. See Iowa Code section 96.6-2. Among the elements it must prove is that the final incident leading directly to the decision to discharge was a current act of misconduct. See 871 IAC 24.32(8). The final act was the claimant's request for a leave of absence for medical reasons. The administrative law judge finds no misconduct in such a request. The administrative law judge also finds no misconduct in the claimant's removal of personal effects from his office. The act of removing the state license was at worst an isolated instance of poor judgment. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated June 11, 2007, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs