IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

GARRY N FULLER Claimant **ALLSTEEL INC** Employer	**APPEAL 21A-UI-13894-JC-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 06/28/20** **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/appellant, Garry N. Fuller, filed an appeal from the June 4, 2021 (reference 02) Iowa Workforce Development ("IWD") unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A first telephone hearing was scheduled for August 12, 2021. The claimant appeared personally. Lesley Buhler and Kerin McDonald appeared for the employer. The hearing was postponed to allow claimant to receive employer exhibits. After proper notice, a telephone hearing was conducted on September 7, 2021. The claimant participated. The employer, Allsteel Inc., participated through Amanda Lange, hearing representative. Kerin McDonald testified for the employer. Claimant Exhibits A-C and Employer exhibits 1-2 were admitted into evidence.

The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a materials handler and was separated from employment on March 29, 2021 when he was discharged.

The employer has a written attendance policy and claimant was trained at the time of hire. Employer considers an employee to be a no call/no show if they do not notify a manager by the halfway time of a scheduled shift. Employees were expected to contact their manager to report an absence prior to a shift start time. Employer does not have a specific written policy regarding the number of no call/no shows an employee may have before separation occurred. Claimant had no prior warnings for attendance before the final incident.

Claimant's immediate supervisor had changed in the weeks leading up to the final incident. Claimant did not have his new immediate supervisor's phone number. Claimant had previously contacted his lead worker to report absences without issue.

On March 25, 2021, claimant left his shift early. He notified both his immediate supervisor and his lead worker that he was leaving due to his fiancé's IV being out. (His fiancé was at home and claimant was her primary caregiver). Claimant had intended to call the University of Iowa hospital to resolve the issue quickly, as he had done in the past, but could not this time. He remained with her at home March 26, 2021 because she was very sick after being without her IV for several hours while it was being fixed. He texted and called his lead worker, unaware that the lead worker was on vacation and not supposed to check his phone while on vacation. Claimant had no other employees' numbers to call. He became nervous when he didn't hear back from the lead worker but again reported the absence for March 27, 2021. On March 30, 2021, claimant was again absent and had not been able to reach the lead worker. When claimant went to report to work on March 31, 2021, he learned he had been fired because his badge had been deactivated.

Employer did not learn of the subsequent messages left by claimant until after separation, when the lead worker returned to work. Employer rehired claimant in June 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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). In this case, the claimant did not have the option of remaining employed nor did he express intent to terminate the employment relationship. Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

> "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).

In this case, claimant was discharged for not properly reporting absences March 26-29, 2021. Claimant credibly testified he had not been given his immediate supervisor's phone number, and that his supervisor had just recently changed. Employer did not present credible evidence to refute this or claimant's evidence that he had previously called off shifts to his lead worker without issue. Claimant could not have reasonably known his team leader would be off on an extended vacation and not checking his phone at the time. Claimant also notified employer when he was leaving early on March 25, 2021 of the reason, so the employer at least had some idea of what may be going on.

The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

An employer is entitled to expect its employees to report to work as scheduled or to be notified in a timely manner as to when and why the employee is unable to report to work. Claimant in this case did not have his new manager's number and took reasonable steps each day to report his absences March 26, 27, and 30, 2021. Further, claimant had no prior warnings for similar conduct. Based on the evidence presented, the administrative law judge concludes the conduct for which the claimant was discharged was an isolated incident of poor judgment and inasmuch as the employer had not previously warned the claimant about the issue leading to the separation, it has not met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. Training or general notice to staff about a policy is not considered a disciplinary warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

The question before the administrative law judge in this case is not whether the employer has the right to discharge this employee, but whether the claimant's discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant's discharge was due to job-related misconduct. Accordingly, benefits are allowed provided the claimant is otherwise eligible.

DECISION:

The unemployment insurance decision dated June 4, 2021, (reference 02) is REVERSED. The claimant was discharged but not for disqualifying misconduct. Benefits are allowed, provided he is otherwise eligible.

Jennifer L. Beckman

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Jennifer L. Beckman
Administrative Law Judge
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September 14, 2021
Decision Dated and Mailed

jlb/mh