

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ERIC M BELL
Claimant

JNM ENTERPRISES INC
Employer

APPEAL 18A-UI-06572-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/27/18
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 June 13, 2018, (reference 01) unemployment insurance decision that denied benefits based on his voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on July 2, 2018. The claimant participated and testified. The employer did not participate.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a home delivery driver from June 2017, until this employment ended on December 15, 2017, when he was discharged.

When claimant was initially hired he disclosed to the employer that he had some knee problems which would require surgery at some point in the future. Claimant testified his doctor determined there was no immediate need for surgery, but that knee surgery would have to be done sometime in the coming years. In November 2017 claimant mentioned to the employer that his route was bothering his knees, as it covered a lot of apartment buildings with stairs he had to climb to deliver heavy items. The employer told claimant if he brought in a doctor's note, it would look into giving him a different route. Claimant went and saw his doctor on November 20, 2017. The doctor indicated that surgery was still not necessary and claimant could continue to work without restriction. Claimant reported this to the employer. The employer responded by telling claimant it would nevertheless try to assign him to a different route, but it was going to take him off work until a new route was assigned. The last day claimant worked was November 25, 2017.

On December 15, 2017, claimant received a voicemail from the employer stating it had spoken to its insurance carrier and determined it would be best to wait until after he had knee surgery for him to return to work. Claimant testified his doctor still did not believe surgery was necessary at this point in time, therefore there were no immediate plans for him to have surgery and he was able to work without restriction. The employer nevertheless refused to let claimant return to work and left a second voicemail instructing him to return work property. Claimant took this to mean he had been separated from employment. Claimant testified he was willing and able to return to work, on his previous route, if the employer had let him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

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).

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); see also Iowa Admin. Code r. 871-24.25(35). 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).

The claimant provided credible testimony that it was never his intention to resign employment. Claimant testified he was having problems with his knees. When claimant notified the employer of this, it made the decision to remove him from his route and from work. This decision initially appeared to be temporary, but claimant believed it to be a permanent separation after he was left a message instructing him to return all work property. Claimant's interpretation of the conversation as a discharge was reasonable and the burden of proof falls to the employer.

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."

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 assess points or impose discipline up to or including discharge for the incident under its policy. An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Here, the claimant was separated from work upon the advice of the employer's insurance company, rather than due to any decision, action, or misconduct on his part. Inasmuch as claimant was willing and able to return to work, but not allowed to do so by the employer until such time as he had knee surgery, the employer has not met the burden of proof to establish that claimant engaged in any misconduct. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The June 13, 2018, (reference 01) decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits withheld shall be paid to claimant.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs