

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEAN N BALDWIN
Claimant

APPEAL NO: 18A-UI-04314-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AREA EDUCATION AGENCY 267
Employer

OC: 03/04/18
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge
IAC 871-24.26(21) – Compelled Resignation

STATEMENT OF THE CASE:

The claimant, Dean N. Baldwin, filed a timely appeal from a representative's unemployment insurance decision dated March 30, 2018, (reference 01) which denied unemployment insurance benefits, finding that the claimant voluntarily quit work on March 5, 2018, when the claimant resigned and the employer accepted his resignation. After due notice was provided, a telephone hearing was scheduled for and held on May 3, 2018. Claimant participated. Although duly notified, the employer did not participate.

ISSUE:

The issues are whether the claimant voluntarily quit employment with good cause attributable to the employer, or whether the claimant was compelled to resign or be discharged, and if so, whether the claimant was discharged for work connected misconduct sufficient to warrant the disqualification for benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds: Dean N. Baldwin began employment with Area Education Agency 267 on or about June 1, 2011. Mr. Baldwin was employed as a full-time lead custodian and maintenance worker and was paid by the hour. His immediate supervisor was Mr. Chad Pinkton.

On February 27, 2018, Mr. Baldwin was notified by Mr. Karl Kurt, a representative of the educational agency that his employment with Area Education Agency 267 was going to end. Mr. Baldwin was told he would be discharged from employment and given the only option of submitting a resignation in lieu of being discharged. The employer further indicated that if Mr. Baldwin agreed to resign the education institution would pay three additional months of the claimant's health insurance and would not contest his claim for unemployment insurance benefits. The reason stated for the decision to terminate Mr. Baldwin from his position was that he had failed to obtain approval from his supervisor in advance for working one half hour over-time during his lunch period a recent week of employment.

Mr. Baldwin had inadvertently neglected to report and get approval from his supervisor to work one half hour during his lunch period when a heating and air conditioning contractor had arrived at the facility to perform maintenance work during the claimant's noon hour.

The contractor had shown up unexpectedly, and the claimant immediately began to assist the contractor in performing the work because the work was necessary and Mr. Baldwin thought it prudent not to delay the contractor because the company was being paid by the hour for the services. Because Mr. Baldwin had not clocked out for one half hour period during lunch, his total working hours at the end of the week showed one half hour over-time. Mr. Baldwin had previously been reminded and given one written reprimand for a similar time clock violation, but his supervisor has reassured Mr. Baldwin at the time that "he would never be let go for this type violation."

It is the claimant's belief that he was unexpectedly discharged because the employer wished to outsource maintenance work. Claimant further believes that his job position has not been filled by the employer.

REASONING AND CONCLUSIONS OF LAW:

Based upon the evidence in the record, the administrative law judge concludes the claimant was compelled to resign when he was given the choice of resigning or being discharged. Under the provisions of the Iowa Administrative Code 871-24.26(21). When an individual is compelled to resign by given the choice of resigning or being discharged, the job separation is not considered to be a voluntary leaving.

Because the resignation was not voluntary, and the job separation was initiated by the employer, it is considered a discharge.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992). Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

In this case, the employer has chosen not to supply evidence to support the reasons that the employer chose to separate Mr. Baldwin from his employment. The evidence regarding Mr. Baldwin's separation from employment is based upon the claimant's testimony. The administrative law judge finds the claimant to be a credible witness and finds that his testimony is not inherently improbable.

In this matter, the evidence in the record establishes that the final event which caused Mr. Baldwin's termination took place when the claimant inadvertently failed to obtain approval from his supervisor to work one half hour during his lunch time. The claimant failed to obtain permission from his supervisor because a heating and cooling contractor had unexpectedly arrived at the school facility during the claimant's noon time break. Mr. Baldwin reasonably concluded that because the work was necessary, it was in the employer's best interest to have the contractor begin work as soon as possible to minimize to cost to the educational agency when calculated on an hourly basis. Mr. Baldwin forgot that he neglected to punch out for the

half hour time which ended up being categorized as over-time at the end of the week. Although Mr. Baldwin attempted to explain the circumstances of his omission and explained that he had previously been told that he would never be terminated for a violation of that nature, he was nonetheless discharged by the employer.

Upon application of the facts to the law, the administrative law judge concludes that Mr. Baldwin was discharged under non-disqualifying conditions. Mr. Baldwin did not intentionally violate the employer's rule and had previously been reassured that inadvertent violation of the rule would not result in his termination from employment. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative decision dated March 30, 2018, reference 01 is reversed. Claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all the eligibility requirements of Iowa law.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn