

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANA TILLEY
Claimant

APPEAL NO. 11A-UI-10553-WT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS DEVELOPMENT
Employer

OC: 11/21/10
Claimant: Respondent (1)

Section 96.5-2-a – Misconduct
Section 96.5-1 – Voluntary Quit
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Employer, Genesis Development, filed an appeal from a fact-finding decision dated August 3, 2011, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 1, 2011. Claimant participated personally. Employer participated by Kathey Longergan-Beaman. Employer Exhibit A and Claimant Exhibit One were admitted into evidence.

ISSUES:

1. Whether claimant voluntarily quit or was discharged.
2. Whether claimant was discharged for misconduct.
3. Whether claimant quit for good cause attributable to the employer.
4. Whether the claimant was overpaid.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant began working for employer on March 15, 2011. He last worked July 6, 2011. On that date claimant was disciplined for failing to treat the consumers at the Cedar Street house with “dignity and respect.” Employer alleged that claimant had made a menacing comment at a staff house meeting on July 5, 2011. (Cl. Ex. 1, p. 4).

Claimant interpreted this allegation as an allegation of dependant adult abuse and felt he should be removed from the house. At the meeting on July 6, 2011, he became angry and indicated that he would not work at the Cedar Street house until the matter was “cleared up.” Claimant had been assigned to work other houses in the past. The communication was likely not the clearest at this meeting. Nevertheless, claimant clearly expressed that he felt he should not work in the Cedar Street house until the matter was cleared up. The employer, through Kathy Lonergan-Beaman, the Group Living Coordinator, clearly expressed that the claimant was required to report to Cedar Street house for work on July 6, 2011.

Claimant did not report to the Cedar Street house on July 6, 2011. This is a violation of Genesis Development Personnel Policies and Practices 705.1 which requires employees to report to work at their appropriate work stations assigned by a supervisor. (Emp. Ex. A, p. 2).

The employer initiated a separation of employment with claimant on July 7, 2011 by employer for failing to show up for work on July 6, 2011. In its separation letter, the employer stated that the separation was a voluntary quit.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant quit or was discharged. The fact-finding decision held that the claimant was discharged.

24.1(113) Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of labor-saving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

See 871 IAC 24.1.

The essential issue is which party initiated the employment separation. If the employer initiated the separation, then the separation will generally be considered a termination or layoff. If the claimant initiated the separation, then it will be considered a quit.

In this case, the employer initiated the separation so the matter is viewed as a discharge. In a discharge analysis, the employer must demonstrate work-related misconduct as defined by Iowa law.

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.

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct. To be clear, insubordination can be a form of misconduct. An employee's refusal to follow the reasonable directive of the employer is misconduct, if the employee's intent amounts to a "willful and wanton disregard of the employer's interests." Henry v. Iowa Department of Job Service, 391, N.W.2d 731, 736 (Iowa 1986).

In the instant case, the claimant's refusal to go to work at the Cedar Street house was undeniably intentional. For this reason, the case is a close one. An employer has to have the ability to direct the work of its employees. The weight of the evidence, however, suggests that it was not a willful and wanton disregard of the employer's interests.

The claimant testified credibly that he understood the accusation against him to be an accusation of dependant adult abuse. Claimant had been trained on dependant adult abuse. (Cl. Ex. 1, p. 1). He had been accused of making menacing or threatening comments about a consumer. Claimant denied making the comments but acknowledged he had a confrontation with a consumer he had tried to wake up. He was never given an opportunity to deny the comments until after he was disciplined for the conduct. He strongly and reasonably believed that the matter needed to be further investigated and resolved before he was sent back into the Cedar Street house where the consumer in question resided.

In this case, the employer found that the claimant's alleged conduct on July 6, 2011, was serious enough to warrant formal discipline. The claimant's alleged conduct was undeniably menacing and threatening toward a consumer in the Cedar Street house. It is the finding of the undersigned that the claimant's belief that this alleged conduct warranted a more thorough investigation, and more importantly, a separation of the claimant from the consumer until the matter was truly resolved, was reasonable. His conduct was not a wanton and willful violation of the employer's interests.

DECISION:

The decision of the representative dated August 3, 2011, reference 02, is affirmed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Joseph L. Walsh
Administrative Law Judge

Decision Dated and Mailed

jlw/pjs