

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIMMY W FREDERIKSEN
Claimant

APPEAL 18A-UI-08425-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ASHLEY INVESTMENTS INC
Employer

**OC: 07/01/18
Claimant: Appellant (4)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Admin Code r. 871-23.43(5) – Charging of Benefits to Employer Accounts
Iowa Admin. Code r. 871-24.25(38) – Voluntary Quit Without Good Cause
Iowa Admin. Code r. 871-24.32(1)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Timmy Frederiksen, Claimant/Appellant, filed an appeal from the unemployment insurance decision issued on July 31, 2018, (reference 01) that denied benefits because he was discharged from work with Ashley Investments Inc. for misconduct. The parties were properly notified of the hearing. A telephone hearing was held on August 29, 2018 at 9:00 o'clock a.m. Claimant participated. Employer registered to participate; however, was not available at the telephone number provided at the scheduled time. No exhibits were offered or admitted.

ISSUE:

Whether Claimant's separation was a discharge for disqualifying job-related misconduct or a voluntary quit without good cause attributable to the employer.

FINDINGS OF FACT:

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's testimony:

Claimant was employed full-time by Ashley Investments, Inc. as a heavy equipment operator from September 11, 2015, until his employment ended on June 21, 2018. Claimant's work schedule was Monday through Saturday from 7:00 a.m. until 5:00 p.m. Claimant reported to the owner, Mike Levell.

On Wednesday, June 20, 2018, Claimant gave Mike Levell two weeks' notice of his intent to quit his job; claimant's resignation would have been effective Wednesday, July 4, 2018. Claimant's stated reason for leaving his job at Ashley Investments, Inc. was to accept a "better job" at a recycling center. An offer of employment was neither made by the recycling center nor accepted by the claimant. When claimant arrived at work on Thursday, June 21, 2018, Mike Levell terminated claimant's employment effective immediately without giving any reason.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit his employment without good cause attributable to his employer subject to a discharge for a

non-disqualifying reason prior to claimant's proposed date of resignation. Benefits are allowed from the date of separation to the proposed date of resignation; benefits are denied thereafter.

Iowa Code section 96.5(1)(a) 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. But the individual shall not be disqualified if the department finds that:
 - a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new 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 disqualification shall continue 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. 871-23.43(5) provides:

(5) *Sole purpose*. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

Iowa Admin. Code r. 871-24.25(38) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

Iowa Admin. Code r. 871-24.32(1)(a) provides:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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).

From the date claimant gave notice of his resignation until the effective date of his resignation, claimant is not disqualified for benefits. After claimant gave his notice of his resignation, he was discharged before his two-week notice expired. No reason was offered for claimant's discharge. The employer has not met its burden of proof in establishing disqualifying job related misconduct. Therefore, claimant is not disqualified for benefits from the last day of work until his proposed date of resignation.

From the effective date of claimant's resignation, July 4, 2018, he is disqualified for benefits because he left his employment with Ashley Investment Inc. voluntarily and without good cause attributable to the employer. The disqualification exception of Iowa Code section 96.5(1)(a) and Iowa Administrative Code rule 871-23.43(5) (voluntary quit for the sole purpose of accepting other employment) does not apply in this case, because an offer of employment was not made by the recycling center or accepted by the claimant.

DECISION:

The July 31, 2018, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant voluntarily left the employment without good cause attributable to the employer, but was discharged prior to the resignation effective date. Benefits are allowed from June 24, 2018 until July 4, 2018. Thereafter, benefits are denied until such time as the claimant works in and has been paid wages for insured work equal to ten times his weekly benefit amount.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/rvs