

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRANDAN L FRIEND
Claimant

WAGGONER SOLUTIONS CO
Employer

APPEAL 15A-UI-09109-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/14/15
Claimant: Appellant (1)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 3, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on August 31, 2015. The claimant participated personally. The employer participated through Kevin Waggoner, President. Sue Dinwiddie, Human Resources Assistant, also testified for the employer. No documents were offered or admitted into evidence.

ISSUE:

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the 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: The claimant was employed full time as a laborer and was separated from employment on May 21, 2015, when he voluntarily resigned. Continuing work was available.

The claimant began his employment as a full-time diver, and was managed by John DeSanto. The claimant discontinued diving at his request, and moved into a laborer role in December 2014. His manager was Robert Smith. The claimant tendered his resignation to Robert Smith, after Mr. DeSanto told the claimant that he if was not diving for him in 30 days, he would be fired. The claimant had no pending disciplinary action, and no longer reported to Mr. DeSanto. The claimant did not ask why he would be fired. The claimant did not inquire or mention to his direct manager, Mr. Smith, the comment made, or ever discuss it with human resources or even the president of the company, Kevin Waggoner. No one ever told the claimant he was fired, or gave him any documentation in support of him being fired or soon to be fired.

During the claimant's resignation period, the claimant had conversations with Mr. Waggoner, but did not once ask about the future discharge. However, the claimant did share with

Mr. Waggoner that his wife was pregnant and he wanted to be closer to his ailing grandmother, who lived in Kansas.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged but voluntarily left the employment without good cause attributable to the employer.

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 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.

The claimant tendered his resignation after a single comment made by his former manager. Mr. DeSanto did not have the authority to discharge the claimant, and had no reason to do so. The claimant had no prior disciplinary history, under Mr. DeSanto's leadership, or his manager, Mr. Smith. Even if Mr. DeSanto did tell the claimant he was going to be discharged, and the administrative law judge does not believe he did so, the claimant was obligated to check with upper management to inquire about his job status. The evidence does not support that the employer initiated the separation, or alternately, offered the claimant to resign in lieu of termination. The separation is therefore a resignation, and not a discharge, for unemployment purposes.

Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. Since the claimant did not follow up with management personnel or the owner, and his assumption of having been fired was erroneous, the claimant's failure to continue reporting to work was an abandonment of his job. Benefits are denied.

DECISION:

The August 3, 2015, (reference 01) unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/css