

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**DANIEL R VALENZUELA**  
Claimant

**WALMART INC**  
Employer

**APPEAL 21A-UI-14750-ML-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/21/21**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the June 18, 2021 (reference 01) unemployment insurance decision that determined he was not eligible to receive unemployment insurance benefits. A telephone hearing was held on August 26, 2021. The parties were properly notified of the hearing. The claimant, Daniel Valenzuela, participated personally. The employer, Walmart Inc., was unavailable at the number provided. As such, the employer did not participate.

**ISSUE:**

Did claimant voluntarily quit the employment with good cause attributable to employer?  
Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a Merchandiser. Claimant was employed from approximately August, 2017 until July 23, 2021, when he resigned. Robert Metcalf was claimant's immediate supervisor.

Claimant last performed work for the employer on January 31, 2021. On February 1, 2021, Claimant was arrested while off-duty. He was in custody until sometime on February 2, 2021. Later that day, Claimant's mother called and notified the employer of Claimant's arrest. The employer subsequently placed Claimant on suspension, pending the outcome of his charges.

Claimant resigned via text message on July 23, 2021, because his trial was not scheduled to occur until sometime in November 2021, and Claimant needed to return to work.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is eligible for benefits while he was on a disciplinary suspension.

Iowa Admin. Code r. 871-24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification. This rule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, *Sheryl A. Cosper vs. Iowa Department of Job Service and Blue Cross of Iowa*.

For purposes of unemployment insurance eligibility, a suspension is treated as a temporary discharge and the same issue of misconduct must be resolved. 871 IAC 24.32(9).

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).

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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

At the time of his suspension, there is no evidence Claimant had entered a plea to the charges and was, therefore, entitled to the presumption of innocence. Disqualifying conduct cannot be predicated on a mere arrest unsupported by a conviction or other credible evidence of the

claimant's intentional conduct. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016) (*citing In re Benjamin*, 572 N.Y.S.2d 970, 972 (App. Div. 1991)(per curiam)). Based on the evidence presented, the administrative law judge concludes the employer has not met the burden of proof to establish that claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning which led to his suspension. Benefits are allowed between February 2, 2021, and July 23, 2021, when Claimant voluntarily quit.

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.

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). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Iowa Admin. Code r. 871-24.25(37) provides:

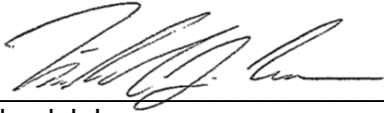
Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code § 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 § 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:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

Claimant tendered a written notice of intent to resign which was accepted effective July 23, 2021, by the employer. Benefits are denied as of July 23, 2021.

**DECISION:**

The June 18, 2021 (reference 01), unemployment insurance decision is reversed. The claimant was suspended from employment without establishment of misconduct. Benefits are allowed between periods ending on February 6, 2021, and July 24, 2021.



---

Michael J. Lunn  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

September 17, 2021  
Decision Dated and Mailed

mjl/kmj