

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHARLES K MILLER
Claimant

ALL IN A DAY LLC
Employer

APPEAL 17A-UI-01053-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/18/16
Claimant: Respondent (1-R)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the January 19, 2017 (reference 04) unemployment insurance decision that allowed benefits based upon a determination that claimant did not quit but was discharged from employment for no disqualifying reason. The parties were properly notified of the hearing. A telephone hearing was held on February 17, 2017. The claimant, Charles K. Miller, participated. The employer, All In a Day, L.L.C., participated through Amy Fischer, Branch Manager; and Toni Holguin, HR Specialist. Employer's Exhibits 1 through 5 were received and admitted into the record without objection.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did 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: Claimant was employed full time, most recently as a temporary employee working as a pallet builder working for SCA Packaging, beginning November 14, 2016. On December 20, claimant reported to the employer that he was concerned about the repetitive nature of his assignment. Claimant asked if the employer had any additional work available, and Fischer reminded him that he signed a document stating he was capable of performing repetitive motions. When Fischer questioned claimant about this, he said he could perform the work but he wanted to look into other options. The following day, SCA Packaging contacted the employer and reported that claimant was not at work due to a doctor's appointment. Fischer contacted claimant and said that his appointment had been canceled and he would be going to the doctor the following day. On December 22, claimant went to the doctor and received a five-pound lifting restriction for the following five days. Once the employer received claimant's lifting restriction, it discharged claimant from his assignment at SCA Packaging, as the assignment could not accommodate

claimant's restriction. The employer believes that claimant's pre-existing tendonitis prevented him from performing his job duties.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed.

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); see also Iowa Admin. Code r. 871-24.25(35). 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). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). Here, there is no evidence that claimant voluntarily left his assignment. Therefore, this case will be analyzed as a discharge from employment and the employer bears the burden to prove disqualifying misconduct.

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 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). Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness or injury cannot constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Here, the employer testified that claimant was removed from his assignment because of his five-pound lifting restriction. This was not a permanent restriction, and there is no evidence that claimant could not perform his job any longer. The employer involuntarily ended claimant's employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. As this separation qualifies claimant to receive unemployment insurance benefits, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The January 19, 2017 (reference 04) unemployment insurance decision is affirmed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

REMAND:

This matter is remanded to the Benefits Bureau of Iowa Workforce Development for a determination on whether, effective December 18, 2016, claimant was able to work, available for work, and actively and earnestly seeking work that he is capable of performing.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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