

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANTHONY G PETTYJOHN
Claimant

IOWA SPECIALIZED TRANSPORT LLC
Employer

**APPEAL 19A-UI-10123-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/27/19
Claimant: Respondent (1R)**

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:

Employer filed an appeal from the December 11, 2019 (reference 04) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 16, 2020, at 1:00 p.m. Claimant participated. Employer participated through Amanda Sowle, Office Manager. Employer's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant's separation was a discharge for disqualifying job-related misconduct or a voluntary quit without good cause attributable to employer.
Whether claimant was overpaid benefits.
Whether claimant should repay those benefits and/or whether employer should be charged based upon its participation in the fact-finding interview.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as an on-call truck driver from August 2018 until his employment with Iowa Specialized Transport, LLC ended on September 27, 2019. (Sowle Testimony) Employer would contact claimant and offer claimant assignments when available. (Sowle Testimony) Claimant would either accept or reject the offered assignment. (Sowle Testimony) On September 27, 2019, employer offered claimant an assignment. (Sowle Testimony) Claimant and employer could not agree on compensation terms for the assignment. (Sowle Testimony) Claimant did not accept the assignment offered. (Sowle Testimony) Employer did not contact claimant with any other assignments after September 27, 2019. (Sowle Testimony) Claimant had no intention of quitting his employment. (Claimant Testimony) Whether claimant is able to and available for work as an on-call worker has not yet been investigated or adjudicated by the Benefits Bureau of Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not voluntarily quit his employment; claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code §§ 96.5(1). 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 there is no expressed intention or act to sever the employment relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). In this case, claimant had no intention of terminating his employment relationship with Iowa Specialized Transport and took no overt action to carry out an intention to quit. Because claimant did not voluntarily quit his job, claimant's separation from employment must be analyzed as a discharge.

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. 871-24.32(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).

There is no evidence of misconduct by claimant. Employer has not met its burden of proving disqualifying job-related misconduct. Accordingly, benefits are allowed provided claimant is otherwise eligible and pending the outcome of the remanded issue. Whether claimant is able to

and available for work as an on-call worker should be remanded to the benefits bureau for an initial determination.

Because claimant's separation was not disqualifying, the issues of overpayment, repayment and chargeability are moot pending the outcome of the remanded issue.

DECISION:

The December 11, 2019 (reference 04) unemployment insurance decision is affirmed. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible and pending the outcome of the remanded issue. The issues of overpayment, repayment and chargeability are moot pending the outcome of the remanded issue.

REMAND:

Whether the claimant is able to and available for work as an on-call worker is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

acw/rvs