

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BENNETT ELL
Claimant

ALFAGOMMA AMERICA INC
Employer

IWD Appeal No. 20A-UI-15187

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/02/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the November 4, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 22, 2021. The claimant, Bennett Ell, appeared and testified. The employer, Alfagomma America, Inc., participated through controller Jim Lofgren. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records, including the fact-finding documents. The employer submitted exhibits, which were admitted without objection. The claimant submitted an exhibit, which was admitted without objection.

ISSUES:

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 began working for employer on March 6, 2006. His last day on the job was July 29, 2020, at which time he was a maintenance supervisor.

On July 29, claimant received a call from his son. The son needed a ride to a court-ordered appointment and the son's transportation had fallen through. The claimant left work to assist the son and was gone around thirty minutes. Claimant used a company vehicle for this task. Claimant had a personal vehicle on site but believed it would be quicker to use the company vehicle.

Claimant did not sign out the company vehicle. Claimant did not "punch out" for the time he was gone. Claimant, because of an operating-while-intoxicated offense, has an ignition interlock device in his personal vehicle and drives under a temporary restricted license (TRL). Under the TRL, claimant should not have been driving the company vehicle, but claimant believed a different supervisor had authorized him or even directed him to use the company vehicle (for company business).

When claimant returned from this errand, Lofgren confronted him. Claimant told Lofgren he had gone to a local supplier whom he frequents. Lofgren investigated this claim and learned it was not true from the supplier. Claimant was given multiple opportunities to retract his claim. He eventually did so and admitted where he had actually been, but only after being asked several times. Claimant was suspended. Lofgren researched company policy and ultimately decided to terminate claimant.

Claimant filed for unemployment benefits. His application was denied. He filed a timely appeal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 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.

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 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 Administrative Code rule 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).

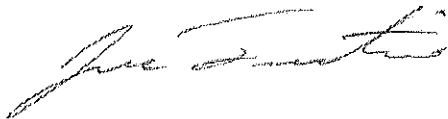
First it must be determined whether claimant quit or was discharged from employment. A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills 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). 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, 440 (Iowa Ct. App. 1992).

Here I conclude claimant was discharged. He did not intend to quit. He did not carry out an overt act expressing an intent to quit. It is clear claimant was discharged.

I further conclude claimant was discharged for misconduct. Claimant took a company vehicle for personal business without authorization. He conducted personal business on company time. He transported a family member in a company vehicle. When confronted about his behavior, he lied to his employer, multiple times. This rises to the level of misconduct, as defined above. Benefits are denied.

DECISION:

The November 4, 2020 (reference 01) unemployment insurance decision is affirmed. Benefits are denied.



Joseph Ferrentino
Administrative Law Judge
Department of Inspections and Appeals
Administrative Hearings Division

January 26, 2021
Decision Dated and Mailed

JF/lb

cc: BENNETT ELL, Claimant (by First Class Mail)
Alphagomma America INC, Employer (by First Class Mail)
Nicole Merrill, IWD (By Email)
Joni Benson, IWD (By Email)

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.