IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

ANTOINE CLOYD Claimant **M&N HEATING AND COOLING** Employer	**APPEAL 19A-UI-07571-DB-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/25/19** **Claimant: Respondent (1)**

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/appellant filed an appeal from the September 23, 2019 (reference 01) unemployment insurance decision that allowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on October 16, 2019. The claimant, Antoine Cloyd, participated personally. The employer, M&N Heating and Cooling, participated through witnesses Constance Engels and Robert Wiegmann. The administrative law judge took official notice of the claimant's administrative records, including the fact-finding documents.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a technician helper. He began working for this employer in at the beginning of August, 2019 and his employment ended on August 29, 2019. His job duties included assisting with installations and repairs. His immediate supervisor was Robert Wiegmann. Constance Engles is the President of the company.

Claimant typically started work around 7:30 a.m. and worked on a job until it was completed. His hours per week varied but he was considered a full-time employee. The employer typically schedules workers for shifts a day beforehand. On August 28, 2019, claimant had to transport his children to a doctor's appointment and was absent from work. He notified Ms. Engels about his absence prior to the start of his scheduled shift. The employer has no written or verbal attendance policy in place for its employees.

The evening of August 28, 2019, Ms. Engels sent a text message to the claimant advising him that “Antoine you can stay home tomorrow”. She did this because there was no work available to the claimant on August 29, 2019 since he was not at work the day prior and the jobs had been scheduled at that time. Claimant did not receive the text message.

On August 29, 2019, claimant met with two other co-workers at their normal morning meeting place and was told that he was not supposed to be with them on the job. Claimant immediately telephoned Ms. Engels and was upset that he was not scheduled to work. Claimant yelled at Ms. Engels and said “this is bullshit” during the conversation with her. Ms. Engels then told the claimant that they did not need him anymore and that he needed to contact Mr. Wiegmann. Claimant telephoned Mr. Wiegmann, who told him that he was not what he expected and that he was not needed anymore. Claimant never stated that he was quitting his employment. Claimant had no previous disciplinary warnings issued to him.

Claimant has received benefits of $1,160.00 for the four weeks between September 15, 2019 and October 12, 2019. The employer participated by telephone in the fact-finding interview through witness Constance Engels.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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).

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 (Iowa Ct. App. 1992).

The decision in this case rests, at least in part, upon the credibility of the parties. The issue must be resolved by an examination of witness credibility and burden of proof. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id*. After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds that the claimant's testimony that he did not quit and was told that the employer did not need him anymore is more credible, especially in light of the employer witnesses' inconsistent statements. Ms. Engels testified that she witnessed Mr. Wiegmann tell the claimant over the telephone that he could report to work the following day (meaning August 30, 2019). However, Mr. Wiegmann specifically testified that he did not tell the claimant to report the following day because the claimant hung up on him.

Claimant had no intention to quit. Further, there was not an overt act of carrying out any intention to quit by claimant. Claimant was discharged from employment. Because claimant was discharged from employment, the burden of proof falls to the employer to establish that claimant was discharged for job-related 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." 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, the employer incurs potential liability for unemployment insurance benefits related to that separation.

While claimant did use profane language towards Ms. Engels, this was in response to claimant being told he was not allowed to work on August 29, 2019. While the administrative law judge does not condone this type of behavior, it is understood how in the spur of the moment the claimant would have reacted this way. This single occurrence of profanity, which was not accompanied by any threats of violence or said in front of customers, was an isolated incident of poor judgment and claimant is guilty of no more than "good faith errors in judgment." 871 IAC 24.32(1)(a). Instances of poor judgment are not misconduct. *Richers v. Iowa Dept. of Job Services*, 479 N.W.2d 308 (Iowa 1991); *Kelly v. IDJS*, 386 N.W.2d 552, 555 (Iowa App. 1986).

While the employer may have been justified in discharging the claimant, the claimant's conduct did not amount to misconduct precluding the payment of unemployment compensation. The employer failed to meets its' burden of proof to establish a current act of disqualifying job-related misconduct. As such, benefits are allowed, provided the claimant is otherwise eligible. The overpayment issue is moot. The employer's account may be charged for benefits paid.

DECISION:

The September 23, 2019 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The claimant is not overpaid benefits based upon this separation from work. The employer's account may be charged for benefits paid.

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Dawn Boucher
Administrative Law Judge

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Decision Dated and Mailed

db/rvs