

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

MARIO D McPHERSON
Claimant

APPEAL NO. 11A-UI-02530-M2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MEDIACOM COMMUNICATIONS
CORPORATION**
Employer

**OC: 12/05/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 22, 2011, reference 03, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 24, 2011. Claimant participated personally. Employer did not participate, having failed to respond to the hearing notice.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct. The issue is whether the appeal is timely. The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds:

The claimant received a misdemeanor charge not in connection with work. As a result claimant was given the chance to resign or be discharged by the employer. Quitting conferred a benefit on employer.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant was told to quit or be discharged for a non-work misdemeanor charge.

Even if claimant's misdemeanor charge were related to work, this is not a disqualifiable event because claimant quit in lieu of discharge. The rules specifically state that benefits shall be allowed when a person quits in lieu of discharge. While there is a difference in opinion on this

issue within the department, the plain reading of the rule has but one logical conclusion. There is no language that shifts the burden of proof from a quit to a misconduct issue. Tradition within the Appeals Section recently has been to shift this type of case to the issue of misconduct. The undersigned has always disagreed with this erroneous interpretation. The rule specifically states that quitting under such duress is a quit for good cause attributable to employer. We as administrative law judges are bound by the enabling statutes and rules. Absent a specific rule that shifts this issue to misconduct, this is a quit for good cause as shown by the rule. Employers receive significant benefit where an employee chooses to quit rather than face discharge. When first introduced the rule history was explained that qualification is automatic under this circumstance because of the benefit conferred on the employer by a voluntary resignation. That history has been ignored far too long.

871 IAC 24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits. Even if it were misconduct, this is a quit for good cause attributable to employer based on the administrative rules.

DECISION:

The decision of the representative dated February 22, 2011, reference 03, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Stan McElderry
Administrative Law Judge

Decision Dated and Mailed

srm/pjs