

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CORY D GUILLIAMS**

Claimant

**APPEAL NO: 09A-UI-06693-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNIFIED CONTRACTING SERVICES INC**

Employer

**OC: 03/29/09**

**Claimant: Respondent (4/R)**

Section 96.5-1 – Voluntary Leaving  
Section 96.5-2-a – Discharge  
Section 96.3-7 – Recovery of Overpayment of Benefits

**STATEMENT OF THE CASE:**

Unified Contracting Services, Inc. (employer)) appealed a representative's April 23, 2009 decision (reference 01) that concluded Cory D. Williams (claimant)) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 27, 2009. The claimant participated in the hearing. Susan Brockway appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer as an environmental technician on July 21, 2008. He was still a student at that time, and was initially paid a wage of \$12.00 per hour. He was given a raise to \$14.00 per hour on October 20, 2008, and was told that there would likely be another wage review once he graduated college in December and completed some additional certification classes. He did do some of the certification classes in January and February, and was scheduled for an additional class in April. Beginning in about January the claimant began pressing for an additional wage increase, and was told there would be a future review, but that no action would occur immediately. On March 31, 2009 the claimant called the business' president and gave a two-week notice of resignation; the president accepted the resignation. His last day would have been April 14, 2009. The reason he gave his notice was that he had not gotten the increase he had expected and wanted to free up time so he could explore other employment opportunities. He was also unhappy about the employer's multiple revisions of policies, including its drug testing policy.

The claimant had been working on a project in Kansas when he gave his resignation notice. On April 1, he and some other employees working on the crew came back to Des Moines. On April 2 he came into the employer's office to turn in his logbooks. When he inquired about what project he would be next assigned to, the employer advised him that he should just turn in his materials and he would "be done." The reason the employer effectively discharged the claimant prior to the expiration of his notice period was that the employer understood from a verbal report from a medical review officer that a drug test to which the claimant had been required to submit on March 30 was positive for marijuana. The employer did not have information regarding the collection or testing procedures, and had not given the claimant any notice regarding his right to have a retained split portion of the sample tested, as the employer did not see a reason to do this since the claimant had already given his resignation notice.

The claimant established an unemployment insurance benefit year effective March 29, 2009. His weekly benefit amount was calculated to be \$256.00. He reported receiving wages in the amount of \$224.00 from his work during the week ending April 4, and received a reduced benefit amount that week in the amount of \$96.00. He has received the full weekly benefit amount for each of the weeks that followed through the week ending May 16, 2009.

#### **REASONING AND CONCLUSIONS OF LAW:**

A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. On March 31 the claimant did express his intent not to remain employed with the employer after April 14, and the employer accepted the resignation. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits as of April 14 unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Quitting because of a dissatisfaction with the wage paid, where the claimant had previously known and accepted the wage is not good cause. 871 IAC 24.25(13). The fact that the employer had indicated that there would be an opportunity for a further increase in the future but where that future was not a set date and the increase did not come soon enough to satisfy the claimant is not good cause for quitting. The claimant has not satisfied that burden. Benefits are denied effective April 14, 2009.

The next issue in this case is whether, for the time prior to the effective date of the claimant's quit, the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue in this case is whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right to terminate the

claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate questions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a; 871 IAC 24.32(1)a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

The reason cited by the employer for discharging the claimant is violation of the employer's drug and alcohol policy through a positive drug test. In order for a violation of an employer's drug or alcohol policy by a positive drug or alcohol test to be disqualifying misconduct, it must be based on a test performed in substantial compliance with Iowa's drug and alcohol testing laws. Harrison v. Employment Appeal Board, 659 N.W.2d 581 (Iowa 2003); Eaton v. Iowa Employment Appeal Board, 602 N.W.2d 553, 558 (Iowa 1999); see also, Sims v. NCI Holding Corp., 759 NW2d 333 (Iowa 2009). The Eaton court said, "It would be contrary to the spirit of chapter 730 to allow an employer to benefit from an unauthorized drug test by relying on it as a basis to disqualify an employee from unemployment compensation benefits." Eaton, 602 N.W.2d at 558. In Harrison, the court specifically noted the statutory requirement that the employer must give the employee a written notice of the positive drug test, sent by certified mail, return receipt requested, informing the employee of his right to have the split sample tested at a laboratory of his choice and at a cost consistent with the employer's cost. The employer did not provide any written notice, by certified mail or otherwise. The employer has not shown that it substantially complied with the drug testing collection or testing requirements. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, while the employer may have had a good business reason not to continue to employ the claimant pending the end of his notice period, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits for the time prior to April 14.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded the Claims Section.

#### **DECISION:**

The representative's April 23, 2009 decision (reference 01) is modified in favor of the employer. The claimant voluntarily quit without good cause attributable to the employer effective April 14, 2009. The employer's discharge of the claimant prior to the effective date of the quit was not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits

from April 2 until April 14, 2009, if he is otherwise eligible. The employer is chargeable for any benefits paid for that period. As of April 14, 2009, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The employer is not chargeable for any benefits after April 14, 2009. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/css