IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

STEVEN D WERNER Claimant **AADG INC** Employer	**APPEAL 17A-UI-09259-NM-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 08/13/17** **Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 1, 2017, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on September 28, 2017. The claimant participated and testified. The employer participated through Human Resource Coordinator Gina Bray. Claimant's Exhibit A and employer's Exhibit 1 were received into evidence.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a lead paint line hanger from July 5, 2012, until this employment ended on August 11, 2017, when he was discharged.

On August 11, 2017, claimant was working hanging doors. Claimant was told by a supervisor he was not doing this job correctly and would therefore be moved to work in a different area. Claimant was then instructed to go work in the door lugging, or door take down, area. The job required claimant to move doors, weighing approximately 100 pounds, with another employee from one location to another. Several years prior claimant had suffered a work-related injury doing this job and he had concerns about his ability to do this particular job going forward. Earlier in the week Director of Operations, Mike Jolly, had attended a staff meeting where he emphasized to employees that if they did not feel they could do a job safely they should report this to their supervisor and decline the job. Claimant testified he did not think he could do the door lugging job safely. Claimant told the supervisor he did not think he back could handle doing to the job and believed he had work restrictions in place preventing him from doing the

job. The employer insisted to claimant that he did not have any work restrictions in place, but claimant continued to tell them he believed he did.

Claimant was then taken to the safety manager's office and presented with a document issued in May 2015 releasing him to return to work without restriction. (Exhibit 1). Claimant continued to insist he did have work restrictions in place and told the employer he was not sure why they did not have that documentation. Claimant was then advised he either needed to work in the door lugging area, or the employer would deem him to have resigned. Claimant again stated he could not do that job. Claimant was then asked by a member of human resources if that meant he was resigning and he responded, "I guess so" and left. Bray testified had claimant responded in the negative, he would have been discharged for insubordination. Approximately one week after his discharge, claimant met with Jolly and provided him with documentation showing, on March 1, 2016, as part of an examination to determine claimant's impairment rating for his work related injury, a doctor recommended a lifting restriction of no more than 30-35 pounds on an occasional basis and no more than 20 pounds on a regular basis. (Exhibit A). The employer determined this recommendation was not valid, as it was done in anticipation of litigation regarding claimant's workplace injury, and he continued to remain separated from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

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 Admin. Code r. 871-24.26(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.

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); *see also* Iowa Admin. Code r. 871-24.25(35). 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).

Here, claimant was separated from employment after he refused to work in the area he was assigned. Following a lengthy back and forth between the employer and claimant about the reasons he was refusing to work in the area he was assigned, claimant stated, when asked if his refusal meant he was resigning, "I guess so." The employer testified had claimant responded in the negative, he would have been discharged for insubordination. Since claimant would not have been allowed to continue working had he not resigned, the separation was a discharge, the burden of proof falls to the employer, and the issue of misconduct is examined.

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:
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> 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).

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). 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." When based on carelessness, the

carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the incident under its policy. 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, employer incurs potential liability for unemployment insurance benefits related to that separation. Insubordination does not equal misconduct if it is reasonable under the circumstances. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa App. 1985). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. (Refusal to pick up mail at a place where racial harassment occurred.) *Woods v. Iowa Dep't of Job Serv.,* 327 N.W.2d 768, 771 (Iowa 1982). The Iowa Court of Appeals has previously found an employee's refusal to push a cart he, in good faith, believed was too heavy, just days after suffering a back injury at work, was found not to have engaged in misconduct. *Woodbury Cnty. v. Emp't Appeal Bd.*, No. 03-1198 (Iowa Ct. App. filed April 14, 2004).

In this case, claimant refused to work in the area he was assigned because he did not believe he could do so safely, given his previous injury, and believed he had work restrictions in place that prevented him from doing that particular job. Claimant's belief that the restrictions were in place and he might reinjure himself if he performed the work assigned, whether or not correct, was in good faith and reasonable given the circumstances. Inasmuch as claimant had a reasonable, good faith reason for refusing to do the assigned work, the employer has not met the burden of proof to establish that claimant engaged in misconduct. Benefits are allowed.

DECISION:

The September 1, 2017, (reference 01) decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits withheld shall be paid to claimant.

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Nicole Merrill
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs