

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

IVAN L SPITZNOGLE

Claimant

APPEAL 22A-UI-03639-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORTHWESTERN PLASTICS LTD

Employer

OC: 01/02/22

Claimant: Respondent (1)

Iowa Code §96.5(2)a-Discharge/Misconduct

Iowa Code §96.5(1)- Voluntary Quit

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:

On January 31, 2022, the employer/appellant filed an appeal from the January 20, 2022, (reference 02) unemployment insurance decision that allowed benefits based on claimant voluntary quitting for good cause attributable to the employer because there was a change in the contract of hire. The parties were properly notified about the hearing. A telephone hearing was held on March 10, 2022. Claimant participated. Employer participated through Human Resource, Autumn Meinders. Lead Supervisor, Eric Osborn, was called as a witness. Administrative notice was taken of claimant's unemployment insurance benefits records.

ISSUES:

1. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
2. Should claimant repay benefits?
3. Is the claimant overpaid benefits?
4. Should the employer be charged due to employer participation in fact finding?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on April 10, 2021. Claimant last worked as a full-time team lead. Claimant was separated from employment on January 7, 2022.

The employer hired claimant as a team lead to lead one of their production teams. The employer was never satisfied with claimant's job performance as a team lead. Claimant's supervisor, Eric Osborn, spoke to claimant about issues he was seeing with claimant's leadership. On October

29, 2021, Mr. Osborn wrote claimant up for his lack of leadership and allowing his team to take excessive smoke breaks, using their cellphones, and for his lack of direction. Claimant spoke to his team about these issues; however, the employer would not allow him to discipline the team members. Since claimant did not have any disciplinary authority to fire employees the team members continued to disregard his corrections.

The week of January 3, 2022, the employees were required to work until 4:00 p.m. Mr. Osborn noticed throughout the week claimant's team had cleaned up and were gone around 3:15 p.m. On Friday, January 7, 2022, Mr. Osborn called claimant to the office. Mr. Osborn informed claimant that he was no longer going to be a lead and that he was going to change the teams around and allow someone else to be the lead. Mr. Osborn did not tell him what his new role would be. Claimant became upset and responded that he was not going to do production. The parties exchanged words and after claimant continued to say he was not going to work production Mr. Osborn said: "then you need to leave." Mr. Osborne wanted claimant to leave his office. Claimant said he was done and left the office. Claimant retrieved his personal belongings and was escorted off the premises. The employer had continuing work available to claimant if he had not left the premises.

Claimant filed for benefits with an effective date of January 2, 2022. Claimant's weekly benefit amount was \$601.00. Claimant received \$4,207.00 for the week ending January 22, 2022 through week ending March 5, 2022.

The employer did not participate in the fact-finding interview with Iowa Workforce Development. Ms. Meinders typically participated on the employer's behalf during the interview. Ms. Meinders had a family emergency and had to leave work and was not able to participate on the employer's behalf.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily quit the employment with good cause attributable to the employer.

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(1) 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:

- (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.
- b. 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).

Iowa Admin. Code r. 871-24.32(5) provides:

- (5) Trial period. A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

The claimant's supervisor, Mr. Osborn, testified he was never satisfied with claimant's job performance. This is what led to claimant being removed from the team lead position. Failure to meet the employer's standards on job performance is not misconduct that disqualifies a claimant from unemployment insurance benefits. Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). As a result, there was no disqualifying basis for the demotion.

Next it must be determined if there was a change in the contract of hire that allows claimant to receive benefits because the claimant's leaving was for good cause attributable to the employer. In this case there was no corresponding reduction in pay or hours as a result of the demotion, however, it did result in a loss of status. Claimant would become a coworker among people he previously supervised. His loss of supervisory, management and administrative authority and duties is considered a substantial change in contract of hire and the separation was with good cause attributable to the employer. Benefits are allowed and the employer's account is subject to charge.

Since the claimant is entitled to benefits the issue of overpayment and whether claimant should repay benefits is moot.

DECISION:

The January 20, 2022, (reference 02) unemployment insurance decision is AFFIRMED. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

Since the claimant is entitled to benefits the issue of overpayment and whether claimant should repay benefits is moot.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

March 24, 2022
Decision Dated and Mailed

cs/kmj