

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN E ALDEN
Claimant

APPEAL NO. 11A-UI-14024-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**NEW LONDON
COMMUNITY SCHOOL DISTRICT**
Employer

**OC: 10-17-11
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.5(1) – Voluntary Leaving

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 19, 2011, reference 07, decision that allowed benefits. After due notice was issued, a hearing was held on November 22, 2011. The claimant did participate. The employer did participate through Jessica Boyer, board secretary, Todd Palmatier, athletic director and elementary school principal, and Chad Reighard, superintendent of schools. Employer's Exhibit One was entered and received into the record.

ISSUE:

Was the claimant discharged due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a coach, part-time, beginning in the May 12, 1999, through September 19, 2011, when he was discharged. The claimant has worked as the junior high boys basketball coach for 15 years. The claimant was told that if he did not quit as the coach of the junior high boys basketball coach, he would be discharged. He only voluntarily quit under duress. He worked both as the junior high boy basketball coach and as a baseball coach. The employer decided that they wanted a junior high basketball coach who would coach along the same lines as the high school coach. The employer's evidence does not establish that the claimant was intentionally not coaching the way they wanted him to. The employer simply decided they wanted another coach at the junior high level. The claimant still has his contract as baseball coach.

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.

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.

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). The claimant had no intention of quitting, he was told he had to quit or he would be discharged. The employer initiated the separation. Under these circumstances, such cases must be analyzed as a discharge from employment. *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992).

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.

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. IDJS*, 386 N.W.2d 552 (Iowa App. 1986). The employer simply wanted someone with a different coaching style. Such a circumstance is not job-connected misconduct. Accordingly, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The October 19, 2011 (reference 07) decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw