

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 on September 23, 2002. He worked full time as a customer service representative in the employer's Davenport, Iowa call center. His last day of work was July 23, 2005.

The claimant was the caretaker for his debilitated aunt who lived in his home. She had a heart attack and was hospitalized, and then upon her release needed the claimant's care once she was returned to his home. As a result, the claimant called in from July 27 through August 1, 2005. He left several voice messages at the call-in number asking for a call back from a supervisor regarding his return to work.

When he did not get a response, on August 2, August 3, and August 4, 2005, he called direct to the office's front desk and spoke to a receptionist, again reporting that he was off work and asking for a call back from his supervisor. His supervisor, Ms. Novitske, did call him on August 5, 2005, but not because she had gotten any message to call him, rather, because the employer's records showed the claimant as a no-call, no-show for August 2, August 3, and August 4 because he had not used the automated call-in system.

She asked him why he was not at work. He attempted to explain the situation, and then indicated that he was interesting in returning to work on a part time status so he could go back to school. He indicated that he would not know his work schedule for about a week. Ms. Novitske indicated that she doubted that there was any part time work available but that she would check on some things and then get back to him. She called back later and left a message that the employer had determined to treat his three-day no-call, no-show on the automated call-in system to be job abandonment under the employer's attendance policy. When the claimant got his school schedule about a week later, in fact he could have continued to work his regular full time schedule while attending his classes.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant voluntarily quit.

Iowa Code section 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 24.25 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. A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The employer asserted that the claimant was not discharged but that he quit either through a three-day no-call, no-show job abandonment or because of his inquiry about reducing his hours

to attend school. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code section 96.6-2. Even though he did not call in on the proper system on August 2, August 3, and August 4, 2005, the claimant's failure to do so is understandable given the employer's failure to respond to the messages he left on the call-in system. While he had indicated an interest in reducing his hours in order to go to school, as of August 5, 2005, he did not indicate that it was definite that he had to go to part time status; he did not even know his class schedule at that time. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

The issue in this case is then 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 or even had any other choice but 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 decisions. 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 section 96.5-2-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 focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer's interest, or
 2. The employee's duties and obligations to the employer.

Iowa Code section 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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The reason the employer effectively discharged the claimant was his missing work and improperly calling in on August 2, August 3, and August 4, 2005. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's October 7, 2005 decision (reference 03) is affirmed. The claimant did not voluntarily quit and the employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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