**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS BUREAU**

| | |
|---|---|
| **TODD A DAVIS**<br>Claimant<br><br>**DECKER TRUCK LINE INC**<br>Employer | **APPEAL 19A-UI-08809-AD-T**<br><br>**ADMINISTRATIVE LAW JUDGE DECISION**<br><br>**OC: 10/13/19**<br>**Claimant: Appellant (2)** |

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

**STATEMENT OF THE CASE:**

On November 8, 2019, Todd Davis (claimant) filed a timely appeal from the November 4, 2019 (reference 01) unemployment insurance decision that found claimant was not eligible to receive unemployment insurance benefits. Specifically, the decision found claimant voluntarily quit work on September 5, 2019 for personal reasons, and the quitting was not caused by employer.

A telephone hearing was held on December 4, 2019. The parties were properly notified of the hearing. The claimant participated personally and was represented by attorney John S. Pieters, Sr. Decker Truck Line Inc. (employer) participated by Human Resources Director Courtney Bachel.

Employers Exhibits 1 and 2 were admitted.

**ISSUE:**

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began work with employer on April 17, 2019. He worked as a full-time driver. His direct supervisor was Fleet Manager Zac Bax. The last day he worked on the job was September 4, 2019. He separated from employment on September 5, 2019.

Claimant contacted employer by phone on September 4, 2019, as he was driving back to the yard. He spoke with Retention Manager Darin Ladlie. Claimant told Ladlie he was thinking about taking another job that would have allowed him to be at home more often. He wanted to discuss with Ladlie how he should go about doing that in a way that would keep him in good standing with employer, should he decide to take the job. Ladlie told claimant he would have to call him back. Claimant did not hear further from Ladlie. It was not claimant's intention to immediately quit when he spoke with Ladlie.

Claimant spoke to another representative of employee when he returned to the yard. Claimant does not recall this individual's name but does know him, as this individual had disciplined him in the past. Claimant understood him to be a member of management. This individual told him there was no work for him and that claimant "had made his decision." Claimant understood this to mean that employer had terminated him. This upset claimant, and he left the yard. Claimant then spoke several times with another representative of employee about work-related doctor's appointments he had the following morning. Claimant told this employee he would attend the appointments. He also stated he was going to clean out his truck and have his roommate come pick him up, as he had been separated from employer.

The morning of September 5, claimant did not attend his doctor's appointments. Employer called claimant and left a message to call them back. Bachel then waited 24 hours to send out a voluntary resignation notice. Exhibit 1 and 2. Employer did not hear back from claimant in that timeframe and so Bachel believed claimant had quit. Bachel sent claimant a letter informing him of his separation from employment, dated and effective September 5, 2019. Exhibit 2. Claimant would have been assigned a load after attending the doctor's appointments. There was continued work for him to complete.

There was no further communication between the parties until the following week. At that time, claimant contacted employer to ask about the status of his last paycheck. There was no discussion at that time about whether he had quit or been discharged.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons set forth below, the November 4, 2019 (reference 1) unemployment insurance decision that found claimant voluntarily quit without good cause attributable to employer is REVERSED. Claimant did not voluntarily quit but was discharged by employer for reasons that did not constitute job-related misconduct. Claimant is eligible for benefits beginning with the benefit week ending October 19, 2019, provided he is otherwise eligible.

Iowa Code section 96.5(1)a provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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. 871-24.25 provides in relevant part:

> Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10.

The employer has the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Emp't Appeal Bd*., 883 N.W.2d 179 (Iowa 2016). "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". Id. (citing *Cook v. Iowa Dept. of Job Service*, 299 N.W.2d 698, 701 (Iowa 1980)). 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).

This is a difficult case, due in large part to a lack of clear communication between the parties about claimant's employment status following the conversation claimant had with Ladlie on September 4, 2019. In voluntary quit cases, the burden of proof is on employer to show claimant voluntarily quit. Employer has failed to carry its burden in this case.

The administrative law judge finds claimant did not intend to voluntarily quit at the time he spoke with Ladlie. He simply intended to speak with Ladlie about the possibility of leaving employer for another position. Ladlie did not call back claimant to further clarify his intentions. Instead, when claimant returned to the yard, he was told there was no work for him and he had "made his decision." Claimant reasonably believed this meant he had been discharged. The steps that claimant took after – cleaning out his truck, failing to appear for the doctor's appointments, and so on – do not evince an intention to quit but instead were a response to his reasonable belief that he had been discharged.

Both parties could have communicated better in this situation. However, employers generally and in this case have a greater duty and/or capacity to clearly communicate than employees do. This is because members of management are considerably more experienced in personnel issues and operate from a position of authority over a subordinate employee. It is therefore reasonable to expect they have a greater ability and duty to clearly communicate regarding critical issues like employment status.

Employer did not clearly communicate what claimant's employment status was to him following his conversation with Ladlie. In fact, Ladlie – who was responsible for employee retention – did not even call claimant back to discuss the matter further. It was not until after claimant reasonably believed he had been discharged that employer took some steps to clarify the situation with him. However, even then it placed just one call and waited just 24 hours before determining he had voluntarily quit and sending claimant a letter to that effect. Exhibit 1 and 2.

Because the administrative law judge finds claimant did not voluntarily quit, the next step in the analysis is to determine when he was separated and whether that separation was disqualifying.

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 provides in relevant part:

> 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 bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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).

Bachel sent claimant a letter informing him of his separation from employment, dated and effective September 5, 2019. Exhibit 2. This is the date of separation. The administrative law judge finds claimant was not discharged for job-related misconduct. He was discharged essentially based on his failure to appear for work. However, claimant's failure to appear was not a deliberate act or omission evincing willful or wanton disregard of the employer's interests. Claimant reasonably believed he had been discharged the day before and no longer worked for employer. His conduct was based on that belief, not based on a disregard for the interests of employer. Claimant's failure to appear for work is best characterized as a good faith error in judgment, which does not constitute job-related misconduct.

**DECISION:**

The November 4, 2019 (reference 01) unemployment insurance decision that found claimant voluntarily quit without good cause attributable to employer is REVERSED. Claimant did not voluntarily quit but was discharged by employer for reasons that did not constitute job-related misconduct. Claimant is eligible for benefits beginning with the benefit week ending October 19, 2019, provided he is otherwise eligible.

_____

Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

_____

Decision Dated and Mailed

abd/scn