

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOSHUA L DELP
Claimant

COMPLETE BUILDING SERVICES INC
Employer

APPEAL NO. 14A-UI-05640-GT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/04/14
Claimant: Appellant (4)**

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 27, 2014 (reference 01) which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on June 25, 2014. Claimant participated. Employer participated by Jackie Berkin, co-owner.

ISSUE:

The issue in this matter is whether claimant quit for good-cause attributable to employer, or whether he was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 2, 2014. Claimant had submitted a written letter of resignation that indicated his last day would be June 1, 2014. He was about to be laid off because the job was at a school which was closing for the summer. Employer had four employees providing janitorial services at the school. They only needed two to remain employed. Claimant was going to move to Indiana at some point in the summer so he went ahead and gave his resignation. Claimant later changed his mind and tried to withdraw his resignation. Employer had contracted with other workers and no longer had work for the claimant. Employer accepted claimant's resignation effective May 2, 2014 and would not allow claimant to withdraw his resignation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good-cause attributable to the employer, but was discharged for no disqualifying reason prior to the intended resignation date.

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 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.

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).

Iowa Admin. Code r. 871-24.25(38) provides:

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 following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

Claimant's decision to quit because he was going to move to Indiana was not a good cause reason attributable to the employer. Because the discharge was in response to a resignation notice no misconduct is established. Since the employer terminated the employment relationship in advance of the resignation notice effective date, the claimant is entitled to benefits from the date of termination until the effective date of the proposed resignation.

DECISION:

The May 27, 2014 (reference 01) decision is modified in favor of the claimant/appellant. The claimant voluntarily left the employment without good cause attributable to the employer, but was discharged prior to the resignation effective date. Benefits are allowed until June 1, 2014. Thereafter, benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times his weekly benefit amount.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/can