

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUGIE S GARRIGUS

Claimant

APPEAL NO. 17A-UI-04639-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANTAGE SHEET METAL INC

Employer

OC: 03/19/17

Claimant: Appellant (4)

Iowa Code Section 96.5(1) – Voluntary Quit

Iowa Code Section 96.5(2)(a) and Iowa Admin. Code r. 871-24.32(9) – Disciplinary Suspension

STATEMENT OF THE CASE:

Augie Garrigus filed a timely appeal from the April 18, 2017, reference 02, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the claims deputy's conclusion that Mr. Garrigus voluntarily quit on March 27, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on May 19, 2017. Mr. Garrigus participated. Dennis Willett represented the employer.

ISSUE:

Whether Mr. Garrigus separated from the employment for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

Whether Mr. Garrigus is eligible for benefits, and whether the employer is liability for benefits, for the disciplinary suspension period that preceded the separation from the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Augie Garrigus was employed by Advantage Sheet Metal, Inc., as full-time journeyman sheet metal work for more than a decade. Mr. Garrigus' immediate supervisor was Chris Harrison, Vice President. Dennis Willett is the company's president. On March 13, 2017, Mr. Willett suspended Mr. Garrigus for two weeks. Mr. Willett directed Mr. Garrigus to return to work on Monday, March 27, 2017.

Mr. Garrigus established an original claim for unemployment insurance benefits during the week of March 19-25, 2017 in response to the disciplinary suspension. Mr. Garrigus delayed filing his claim for benefits until the second week of the suspension. The claim was deemed effective December 19, 2017. Mr. Garrigus made a weekly claim for the benefit weeks that ended March 25, 2017 and the week that ended April 1, 2017. Mr. Garrigus did not make any weekly claims for the period beginning April 2, 2017.

Mr. Willett's decision to suspend Mr. Garrigus for two weeks in March 2017 was based on Mr. Garrigus' dishonesty on December 12, 2016. On December 12, Mr. Willett became aware of damage to Mr. Garrigus' work truck. When Mr. Willett asked Mr. Garrigus about the damage, Mr. Garrigus denied knowledge of the damage or how it occurred. On December 12, Mr. Willett held a meeting with Mr. Garrigus and other employees to address the damage to the work truck. During the meeting, Mr. Garrigus admitted that he had been responsible for the damage to the work truck and had been dishonest with Mr. Willett earlier in the day. Mr. Willett did not take any disciplinary measure at that time. Mr. Willett delayed further action on the matter due to the proximity to the holidays and concern for Mr. Willett's financial situation during or immediately after the holiday season.

Mr. Garrigus did not return to the employment on March 27, 2017, at the end of the two-week suspension in March 2017. Instead, Mr. Garrigus decided he was going to take another week off. Mr. Garrigus had not properly requested vacation and was not approved for vacation. When Mr. Garrigus failed to return from the suspension, Mr. Willett deemed the employment terminated.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

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 Administrative Code rule 871-24.32(9) provides as follows:

Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

Despite the Administrative Code rule, the Iowa Court of Appeals has concluded that a disciplinary suspension is not in fact a termination of employment under Iowa Code Section 96.5(2)(a) and, accordingly, would not subject an unemployment insurance claim to the 10-times weekly benefit amount disqualification. See *FDL Foods, Inc. vs. Employment Appeal Board*, 456 N.W. 2nd 233, 234 (Iowa Ct. App. 1990). Pursuant to the court's ruling in *FDL Foods*, the administrative law judge concludes that the two-week disciplinary suspension did not establish a separation from the employment. Instead, the separation occurred when Mr. Garrigus declined to return to the employment at the end of the disciplinary suspension.

The administrative law judge will return to the separation issue below. In the meantime, the administrative law judge will address Mr. Garrigus' eligibility for benefits during the two-week period of the suspension. The suspension was based on misconduct, but not based on a current act. The conduct that triggered the suspension had occurred three months earlier and had come to the employer's attention three months early. Because the suspension was not based on a current act, it cannot serve as a basis for disqualifying Mr. Garrigus for benefits in connection with the claim that was established during the second week of the suspension. See Iowa Administrative Code rule 871-24.32(8) (current act requirement). Mr. Garrigus is eligible for benefits for the week that ended March 25, 2017, provided he met all other eligibility requirements that week. The employer's account may be charged for benefits paid to Mr. Garrigus for that one week.

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. 871-24.25(21) 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:

(21) The claimant left because of dissatisfaction with the work environment.

Iowa Admin. Code r. 871-24.25(25) 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:

(25) The claimant left to take a vacation.

Iowa Admin. Code r. 871-24.25(27) 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:

(27) The claimant left rather than perform the assigned work as instructed.

The weight of the evidence in the record establishes a voluntary quit on March 27, 2017 that was without good cause attributable to the employer. Mr. Garrigus elected not to return to work on March 27, 2017 because he had decided to take an unauthorized week-long vacation after being off work for two weeks. Mr. Garrigus elected not to return on March 27, 2017 in part due to dissatisfaction with the work environment. The employer's decision to defer action on the December 2016 misconduct to March 2016 did not rise to the level of intolerable or detrimental working conditions that would have prompted a reasonable person to leave the employment.

See Iowa Administrative Code rule 871-24.26(4). Nor did the suspension amount to a change in the conditions of the employment. See Iowa Administrative Code rule 871-24.26(1). Effective the week that began March 26, 2017, Mr. Garrigus is disqualified for unemployment insurance benefits until he works in and is paid wages for insured work equal to ten times his week benefit amount. Mr. Garrigus must meet all other eligibility requirements. The employer's account shall not be charged for benefits paid to Mr. Garrigus for the period beginning March 27, 2017.

DECISION:

The April 18, 2017, reference 02, decision is modified as follows. The claimant was suspended for no disqualifying reason during the two-week period of March 13-25, 2017. The claimant's unemployment insurance claim was in effect March 18, 2017. The claimant is eligible for benefits for the week that ended March 25, 2017, provided he meets all other eligibility requirements. The employer's account may be charged for benefits for that one week. The claimant voluntarily quit the employment effective March 27, 2017 without good cause attributable to the employer. Effective the week that began March 26, 2017, the claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account will not be charged for benefits for the period beginning March 26, 2017.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn