

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTOPHER M PETERSON**  
Claimant

**APPEAL NO. 09A-UI-06578-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAGGONER SOLUTIONS CO**  
Employer

**Original Claim: 03/22/09  
Claimant: Appellant (4)**

Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Kristopher M. Peterson (claimant) appealed a representative's April 22, 2009 decision (reference 01) that concluded he was not qualified to receive benefits, and the account of Waggoner Solutions Company (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 26, 2009. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in February or March 2008. The claimant worked as a full-time laborer. During his employment, the claimant obtained his commercial driver's license so he could drive the employer's vehicles. The claimant's job was not in jeopardy prior to March 23, 2009.

On March 23, 2009, the employer informed the claimant he would no longer be insured under the employer's insurance policy. As a result, the employer had to take the claimant off the books. The employer, however, offered the claimant continued employment as an independent contractor/laborer. The claimant declined this offer of continued employment.

The claimant assumes the employer's insurance company declined to insure him because he had an OWI on his driving record four years ago and also had a couple charges of driving with a suspended license before he began working for the employer.

## REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. Since the claimant had the opportunity to continue his employment, the facts establish that he quit his employment. When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.6-2.

The law presumes a claimant voluntarily quits with good cause when he leaves employment because of a substantial change in his employment. 871 IAC 24.26(1). Changing the claimant from an employee to an independent contractor constitutes a substantial change in the claimant's employment.

The employer may assert the reason for change was not the fault of the employer. In *Wiese v. Iowa Department of Job Service*, 389 N.W.2d 676 (Iowa 1986), the Iowa Supreme Court stated: "We believe that a good faith effort by an employer to continue to provide employment for his employees may be considered in examining whether contract changes are substantial and whether such changes are the cause of an employee quit attributable to the employer."

In *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988), the Iowa Supreme Court stated that:

It is not necessary to show that the employer acted negligently or in bad faith to show that an employee left with good cause attributable to the employer.... [G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith.

(*Id.* at 702.) *Dehmel* the more recent case is more on point with this case.

In the alternative, if the employer discharged the claimant, the discharge occurred when the insurance company would no longer insure the claimant. The evidence suggests the insurance company based this decision on incidents that occurred before the claimant began working for the claimant.

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8). For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence does not establish that the claimant committed a current act of work-connected misconduct. Even if the employer discharged the claimant, the claimant is qualified to receive benefits, because he did not commit a current act of work-connected misconduct.

**DECISION:**

The representative's April 22, 2009 decision (reference 01) is modified in the claimant's favor. The claimant voluntarily quit his employment, but he quit for reasons that qualify him to receive benefits. As of March 22, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw