

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ALAN H LANGHAM**

Claimant

**APPEAL 19A-UI-06935-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BISOM TRUCK LINE INC**

Employer

**OC: 07/28/19**

**Claimant: Respondent (1R)**

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

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed an appeal from the August 26, 2019, (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 25, 2019. The claimant participated personally. The employer participated through Allison Jones of Shinkle & Lynch law office. No employer witness testified.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Claimant Exhibit A was admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?

Did the claimant voluntarily quit the employment with good cause attributable to the employer?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an over-the-road driver and was separated from employment on August 10, 2019. The evidence is disputed as to whether the claimant quit the employment or was discharged by Chad, brother of owner, Michael Udelhoven.

The claimant performed one route on August 6-7, 2019 during his employment. The claimant told the employer after his route that the truck he had been assigned lacked sufficient lumbar support. He then went to a doctor August 10, 2019 for back pain (Claimant Exhibit A). The

claimant informed Chad, who was filling in for Michael Udelhoven, (who was out of the country) that he would be unable to take a route on August 11, 2019 because he was on prescribed medication for his back. According to the claimant, he was “cussed out” and told: “You’re fired. You’re a no good, son-of-a-bitch, c---sucker” and hung up on the claimant. The claimant interpreted this to mean he had been fired. He brought in his keys, doctor’s note and laptop to return to the employer on Monday, August 12, 2019 and no discussion occurred between the parties.

Michael Udelhoven then contacted the claimant to offer him a return to work on August 27, 2019. The issue of whether the claimant refused a suitable offer of work has not been adjudicated by the Benefits Bureau.

Thereafter, the claimant performed work for Centennial in Des Moines from September 14-17, 2019. The claimant permanently separated from employment and the issue of whether the claimant’s separation from that employer is disqualifying has not yet been adjudicated by the Benefits Bureau.

The claimant began new full-time employment with Colton and Associates on September 23, 2019.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$3,239.00, since filing a claim with an effective date of July 28, 2019, through the week ending September 14, 2019. The claimant estimated his wages when making his weekly continued claim for the week ending August 10, 2019. The administrative record also establishes that the employer did not participate in the August 23, 2019 fact-finding interview or make a witness with direct knowledge available for rebuttal. The reason the employer did not attend was that Michael Udelhoven was out of the country at the time. No other details were offered and there was no evidence the employer attempted to participate in writing.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant did not quit but was discharged from employment for no disqualifying reason.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp’t Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp’t Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). 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).

In this case, the claimant did not have the option of remaining employed nor did he express intent to terminate the employment relationship. Rather, the claimant was informed by the owner’s brother, Chad, who was filling in for him while Mr. Udelhoven was out of the country that he was fired after refusing to drive a load on August 11, 2019. Chad did not attend the hearing to refute the claimant’s account of the conversation. The claimant only returned employer equipment after being told he was fired. Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp’t Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Iowa Administrative Code rule 871-24.32(1)a provides:

“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).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The evidence presented in this case does support the claimant was discharged for job-related misconduct as defined by Iowa law. In this case, the claimant was told he was fired after refusing to take a route on August 11, 2019. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985). While it is true that the claimant could have taken a non-prescriptive over-the-counter pain medication which would have allowed him to operate the employer's truck, the credible evidence is that he visited a doctor on August 10, 2019 and was prescribed a medication that he determined was unsafe to take and operate the employer's vehicle. The administrative law judge is persuaded the claimant established sufficient reason for noncompliance and therefore, his actions would not constitute misconduct.

The question before the administrative law judge in this case is not whether the employer has the right to discharge this employee, but whether the claimant's discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant's discharge was due to a final or current act of job related misconduct. Accordingly, benefits are allowed provided the claimant is otherwise eligible.

In the alternative, if the claimant's separation was deemed a voluntary quit and not discharge, the claimant would remain eligible for benefits.

Iowa Admin. Code r. 871-24.26 provides in pertinent parts:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

...

(2) The claimant left due to unsafe working conditions.

...

(4) The claimant left due to intolerable or detrimental working conditions.

Inasmuch as an employer can expect professional conduct and language from its employees, the claimant is entitled to a working environment without being the target of abusive, obscene, name-calling. An employee should not have to endure abusive language directed at them, in order to retain employment any more than an employer would tolerate it from an employee. The administrative law judge is persuaded that the employer's response through Chad to the claimant not taking the August 11, 2019 route due to feeling unsafe, was wholly inappropriate and would constitute detrimental working conditions which would constitute good cause

attributable to the employer for quitting the employment. Whether the separation is categorized as a quit or discharge, the claimant is eligible for benefits.

Because the claimant is eligible for benefits, the issues of overpayment and relief of charges are moot.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

**REMAND:** The following issues are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination:

1. Whether the claimant accurately reported all wages earned with Bisom Truck Line Inc. for the week ending August 10, 2019.
2. Whether the claimant refused a suitable offer of work from Bisom Truck Line Inc. on August 27, 2019.
3. Whether the claimant's permanent separation on September 17, 2019 from Centennial is disqualifying.

**DECISION:**

The August 26, 2019 (reference 03) initial decision is affirmed. The claimant was discharged for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. The following issues are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination:

1. Whether the claimant accurately reported all wages earned with Bisom Truck Line Inc. for the week ending August 10, 2019.
2. Whether the claimant refused a suitable offer of work from Bisom Truck Line Inc. on August 27, 2019.
3. Whether the claimant's permanent separation on September 17, 2019 from Centennial is disqualifying.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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