

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MATTHEW W LANE**

Claimant

**APPEAL NO. 11A-UI-11541-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NEXTERA ENERGY DUANE ARNOLD, LLC**

Employer

**OC: 07/31/11**

**Claimant: Respondent (1)**

Section 96.5-2-a – Misconduct  
Section 96.5-1 – Voluntary Quit  
871 IAC 24.26(21) – Resignation in Lieu of Discharge

**STATEMENT OF THE CASE:**

Nextera Energy Duane Arnold, LLC. filed a timely appeal from an unemployment insurance decision dated August 23, 2011, reference 01, that allowed benefits to Matthew W. Lane. After due notice was issued, a telephone hearing was held September 27, 2011 with Mr. Lane participating. Training Supervisor Clyde Bauer testified for the employer which was represented by Susan Schmelovsky of TALX UC eXpress.

**ISSUES:**

Was the separation a voluntary resignation?  
Was the separation a disqualifying event?

**FINDINGS OF FACT:**

Matthew W. Lane was employed as a training instructor by Nextera Energy Duane Arnold, LLC. from early 2007 until July 28, 2011. He was a full-time employee. Mr. Lane was called to the office of training supervisor, Clyde Bauer, at the request of training manager, Dale Simmons, on the morning of July 28, 2011. Mr. Simmons told Mr. Lane that the company was in the process of discharging him, that his Internet access from home had already been removed and that if he wished to submit a letter of resignation in lieu of discharge, he needed to submit it within the next hour. Mr. Simmons asked Mr. Lane for his answer before leaving the meeting. When Mr. Lane said that he would resign, he was given information as to how to submit the resignation, clear his personal belongings and return his badge.

During the week of July 18, 2011, Mr. Lane was unprepared for a training session. He had known for approximately two months that the training session was scheduled. He had received a letter of reprimand in February 2011 for conducting an investigation that was outside of his duties as a training instructor. He had been placed on a personal improvement plan for 90 days beginning in October 2010.

## REASONING AND CONCLUSIONS OF LAW:

The first question is whether the separation can be considered a voluntary separation. It cannot.

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.

An individual who resigns in lieu of immediate discharge leaves work involuntarily. See 871 IAC 24.26(21). While the ultimate decision to discharge Mr. Lane may not have been made at the time of the meeting on July 28, 2011, the evidence establishes that company management approached Mr. Lane as though separation from employment was a certainty. Under these circumstances, his resignation cannot be viewed as truly voluntary.

The remaining question is whether the separation was a disqualifying event.

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.

871 IAC 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.

The employer has the burden of proof. See Iowa Code § 96.6-2. Among the elements it must prove is that the final incident leading to the decision to sever the employment relationship was a current act of misconduct. See 871 IAC 24.32(8). The final incident appears to have been the training session during the week of July 18, 2011. The evidence does not indicate whether Mr. Lane's lack of preparation was willful, negligent or the result of the lack of necessary job skills. Given the evidence in this record, no disqualification may be imposed.

**DECISION:**

The unemployment insurance decision dated August 23, 2011, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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