

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DONALD P SHELLEY
Claimant

APPEAL 17A-UI-00790-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PER MAR SECURITY & RESEARCH CORP
Employer

**OC: 12/11/16
Claimant: Respondent (1)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.1(113)a – Layoff
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview
Iowa Admin. Code r. 871-23.19 – Employer-Employee Relationship

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the January 12, 2017 (reference 03) unemployment insurance decision that allowed benefits to the claimant based upon him being laid off due to lack of work. The parties were properly notified of the hearing. A telephone hearing was held on February 13, 2017. The claimant, Donald P. Shelley, participated personally. The employer, Per Mar Security & Research Corp., participated through witness Georgette Coykendall. The administrative law judge took administrative notice of the claimant's unemployment insurance record including the fact finding documents.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant laid off?
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?
Was the claimant an employee of this employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired by Neighborhood Patrol Inc. on an as needed basis to cover for other security guard shifts. Claimant worked for one four-hour shift in January or February of 2016. Claimant was never called for any further shifts after this time period.

Per Mar Security & Research Corporation purchased Neighborhood Patrol Inc. effective July 4, 2016. The administrative record establishes that Neighborhood Patrol Inc. was transferred to Per Mar Security & Research Corp.

Claimant has received benefits in the amount of \$3,576.00 for the eight weeks between December 17, 2016 and February 4, 2017. Employer participated in the fact finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation was not the result of a disqualifying reason.

The employer has the burden to establish the separation was a voluntary quitting of employment rather than a discharge. Iowa Code § 96.6(2). A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

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.

In this case the claimant did not intend to voluntarily quit his employment; rather, he was never called to complete any additional job assignments. Employer has failed to prove that the separation was a voluntary quitting.

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. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials;

including temporarily furloughed employees and employees placed on unpaid vacations.

In this case, claimant was never called to complete additional job assignments because no work was available. As such, benefits are allowed. The issues of overpayment, repayment, and the chargeability of the employer's account are moot.

DECISION:

The January 12, 2017 (reference 03) unemployment insurance decision is affirmed. The claimant's separation from employment was for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

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