

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFF D WHEELER
Claimant

APPEAL NO. 08A-UI-04529-A

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAPTAIN JACK COMMUNICATIONS LLC
Employer

**OC: 04/06/08 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Jeff D. Wheeler filed a timely appeal from an unemployment insurance decision dated May 7, 2008, reference 01, that disqualified him for benefits. After due notice was issued, a hearing was held in Des Moines, Iowa on May 28, 2008 with Mr. Wheeler participating. Co-Owner Charlie Notice participated for the employer, Captain Jack Communications, LLC. Claimant Exhibit A and Employer Exhibits One and Two were admitted into evidence.

ISSUE:

Was the claimant's separation from employment a disqualifying event as either a quit or discharge?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jeff D. Wheeler was employed by Captain Jack Communications from August 1997 until April 11, 2008. He last worked full-time as both project manager and accounts receivable manager. In the fall of 2007 Charlie Notice and Harvey Freese purchased the business. The two also own a separate business known as Freese-Notice Weather.

On February 11, 2008 Jeff Wheeler approached the two owners with a complaint about a coworker. Mr. Wheeler was upset at what he viewed as an attempt by the coworker to take over his, Mr. Wheeler's, duties as project manager. He made several proposals to Messers Freese and Notice, including one that he transfer from Captain Jack Communications to Freese-Notice Weather. No position was available for him in that business, however.

Over the next two days, Mr. Wheeler met several more times, with Mr. Freese, seeking a resolution to the situation. These culminated with an e-mail to Mr. Freese on February 13, 2008. (See Exhibit One.) Mr. Freese responded with an e-mail that called for Mr. Wheeler's resignation in return for a guarantee of two-months employment at full salary while Mr. Wheeler

trained his successors. With some modifications in language, Mr. Wheeler signed the document. His employment ended on or about April 11, 2008.

REASONING AND CONCLUSIONS OF LAW:

The analysis of this case begins with the characterization of the separation. The employer has maintained that Mr. Wheeler voluntarily resigned while Mr. Wheeler has argued that his separation from employment was involuntary.

In order to find a voluntary resignation, the administrative law judge must find evidence that Mr. Wheeler intended to sever the employment relationship and carried out some act in furtherance of that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The employer points to Mr. Wheeler's statements at the first meeting on February 11, 2008. Mr. Wheeler, on the other hand, testified that his intent in that meeting was to move his physical location from the Captain Jack Communications office to the Freese-Notice Weather office. In any event, the employer did not accept a resignation from Mr. Wheeler at that time. This is established by the fact that negotiations continued from February 11 through February 13. Mr. Wheeler's last attempt to resolve the situation, Exhibit A, contains no language remotely indicating an intent to resign. The administrative law judge concludes that even if Mr. Wheeler had proposed a resignation on the morning of February 11, he had effectively withdrawn it before February 13.

The employer initiated the separation by proposing the agreement that was ultimately signed by the parties. See Exhibit Two.

A separation initiated by the employer for reasons other than lack of work or lack of resources to pay an employee is better characterized a discharge rather than a voluntary separation. Disqualification for benefits following a discharge is appropriate if, and only if, the discharge was for misconduct in connection with the employment.

Iowa Code section 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 section 96.6-2. No evidence of misconduct appears in the record. Concluding that the claimant did not voluntarily leave his employment and finding no evidence of misconduct, benefits must be allowed.

DECISION:

The unemployment insurance decision dated May 7, 2008, reference 01, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

css/css