

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHN A FLANNERY
Claimant

FOCUS SERVICES LLC
Employer

**APPEAL 19A-UI-09701-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/23/18
Claimant: Respondent (1)**

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:

Employer filed an appeal from the November 26, 2019 (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 7, 2020, at 1:00 p.m. Claimant participated with his attorney, Eric Schade. Employer participated through Karina Holt, Human Resources Assistant. Employer's witnesses included Chris Hislop, On-Site Human Resources Manager, and Jessie Flint, Human Resources Assistant. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant's separation was a voluntary quit without good cause attributable to employer or a discharge due to disqualifying job-related misconduct.
Whether claimant was overpaid benefits.
Whether claimant should repay those benefits and/or whether employer should be charged based upon its participation in the fact-finding interview.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time call center representative from August 13, 2017 until his employment with Focus Services, LLC ended on April 16, 2019. (Hislop Testimony) On November 29, 2018, claimant slipped on ice at work and hit his head. (Hislop Testimony; Claimant Testimony) The resulting injury left claimant unable to work. (Hislop Testimony; Claimant Testimony) Claimant's physician excused him from work through December 16, 2018. (Hislop Testimony) On December 18, 2019, claimant began a medical leave of absence from work. (Hislop Testimony) Claimant's leave of absence expired on March 10, 2019. (Hislop Testimony) Employer did not tell claimant when the leave of absence would expire or what he needed to do to extend the leave of absence. (Claimant Testimony)

Claimant maintained frequent communication with employer through March 2019. (Hislop Testimony) During the first week of April 2019, claimant provided employer with a physician's statement that claimant was released from work until further notice. (Claimant Testimony) On April 16, 2019, employer terminated claimant's employment based upon claimant's failure to return to work after the expiration of his leave of absence. (Hislop Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not voluntarily quit his employment; claimant was discharged for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code §§ 96.5(1). 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 there is no expressed intention or act to sever the employment 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). In this case, claimant had no intention of terminating his employment relationship with Focus Services, LLC as evidenced by him communicating with employer and providing employer with physician's statements. Furthermore, claimant did not tender his resignation. Because claimant did not voluntarily quit his job, claimant's separation from employment must be analyzed as a discharge.

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 disqualification shall continue 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. 871-24.32(1)(a) provides:

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.

This definition of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the

employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

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.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. 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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

It is the duty of the administrative law judge, as the trier of fact, 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 evidence you believe; 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.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the claimant's testimony to be more credible than employer's testimony as he offered specific, first-hand information about the parties' communication regarding his leave of absence.

Claimant did not know the expiration date of his leave of absence; therefore, any failure to extend his leave of absence was not deliberate wrongdoing. There is no evidence that claimant willfully or wantonly disregarded the standards of behavior the employer had a right to expect of him. Employer has not met its burden of proving disqualifying job-related misconduct. Claimant was discharged for no disqualifying reason. Benefits are allowed, provided claimant is otherwise

eligible. Because claimant's separation was not disqualifying, the issues of overpayment, repayment and chargeability are moot.

DECISION:

The November 26, 2019 (reference 03) unemployment insurance decision is affirmed. Claimant was discharged for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible. The issues of overpayment, repayment and chargeability are moot.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/scn