

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARRY B BOETTCHERR
Claimant

APPEAL NO. 17A-UI-00096-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

E J WELCH COMPANY INC
Employer

OC: 12/11/16
Claimant: Respondent (3)

Section 96.5-1 - Voluntary Quit
Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

E J Welch Company (employer) appealed a representative's December 28, 2016, decision (reference 01) that concluded Barry Boettcherr (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 27, 2017. The claimant participated personally. The employer participated by Corey Dickerson, Branch Operations Manager, and Beverly Semon, Human Resources Specialist. Exhibit D-1 was received into evidence. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 28, 1997, as a full-time customer service and warehouse assistant. The claimant signed for receipt of the employer's handbook on August 6, 1997. The employer has an open door policy for employees to discuss problems with management. It did not issue the claimant any warnings during his employment. The employer promised the claimant vacation and sick time. The leave had to be used by the end of the calendar year. The claimant always used his remaining vacation and sick time at the end of the calendar year. The employer allowed the claimant to use sick time for vacation. No changes in that policy were communicated to the claimant prior to December 9, 2016.

On December 9, 2016, the claimant properly requested time off from December 20 to 30, 2016. He wanted to use his remaining sick and vacation time for those days. For the first time in over nineteen years, the employer denied the claimant's request. The employer told the claimant he could not use sick time for vacation. The claimant told the employer he would be resigning if the employer denied him his leave. The employer argued with the claimant over the telephone.

The claimant hung up the telephone. A customer was near him. The employer called the claimant again and started to argue. The claimant hung up. The employer called the claimant a third time and said the claimant had to give the employer two weeks' notice of his resignation in writing. On December 12, 2016, the employer asked the claimant if he still wanted to resign over the leave situation. The claimant provided the employer with a written two weeks' notice of his resignation. The employer terminated the claimant on December 12, 2016, after he presented his resignation.

The claimant filed for unemployment insurance benefits with an effective date of December 11, 2016. The employer did not effectively participate in the fact finding interview on December 27, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant voluntarily quit work with good cause attributable to the employer. Prior to his last day of work the employer discharged the claimant but has not proven misconduct.

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. 871-24.32(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.

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).

Iowa Admin. Code r. 871-24.25(38) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(38) Where the claimant gave the employer an advance notice of resignation which caused the employer to discharge the claimant prior to the proposed date of resignation, no disqualification shall be imposed from the last day of work until the proposed date of resignation; however, benefits will be denied effective the proposed date of resignation.

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 employer has not met its burden of proof to show job related misconduct. The claimant was terminated after giving notice of his resignation.

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.

Iowa Admin. Code r. 871-24.26(4) provides:

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:

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

The law presumes a claimant has left employment with good cause when he quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). The Iowa Supreme Court has stated that a notice of intent to quit is not required when the employee quits due to intolerable or detrimental working conditions. *Hy-vee, Inc. v. Employment Appeal Board and Diyonda L. Avant*, (No. 86/04-0762) (Iowa Sup. Ct. November 18, 2005). The claimant notified the employer of the intolerable condition of having his leave denied. The claimant said he would quit due to the leave. The employer did not rectify the situation. The claimant subsequently quit due to those conditions. The claimant is eligible to receive unemployment insurance benefits as of December 11, 2016, so long as he is otherwise eligible.

DECISION:

The representative's December 28, 2016, decision (reference 01) is modified in favor of the respondent. The claimant voluntarily quit with good cause attributable to the employer. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs