

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

LARRY D GRABER
Claimant

APPEAL NO. 18A-UI-04623-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEABOARD FOODS SERVICES INC
Employer

OC: 03/25/18
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Seaboard Foods Services (employer) appealed a representative's April 9, 2018, decision (reference 01) that concluded Larry Graber (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 May 7, 2018. The claimant was represented by Katrina Phillip, Attorney at Law, and participated personally. The employer participated by Rachael Kroeze, Human Resources Generalist, and Ryan Neumann, Farm Manager. The claimant offered and Exhibit A was received into evidence. Exhibit D-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 August 30, 2017, as a full-time assistant supervisor. He worked at this site for eighteen years under three employers. He signed for receipt of the employer's handbook on September 12, 2017. The employer has a policy that states, "Walking off the job or leaving the premises during work hours without permission will be considered voluntary termination of employment."

The employer planned to move some employees to Georgia in September 2018, and the claimant planned to move with them. In March 2018, the employer hired an assistant manager to take the claimant's position in Iowa. On March 22, 2018, the claimant arrived at the worksite and arranged medicines to give shots to the pigs before loading them on trucks. The employer allowed him to leave early that day and had given him March 23, 2018, as a day of vacation.

The claimant needed everyone to help because they were putting the truck driver an hour behind schedule. The claimant asked the new assistant manager to help. She said she had

paperwork to do and refused to help. The two argued and both walked away. The claimant called the farm manager, talked about the new assistant manager refusing to help, discussed the argument, and asked to leave early to avoid more conflict. The farm manager told the claimant it was approved for him to leave at that time. The two agreed to talk on March 25, 2018. The claimant left work.

The employer took the new assistant manager's statement. She told the employer that the claimant said he quit work and walked off the job. The farm manager called the claimant on March 25, 2018, and terminated him for leaving work after he gave him permission.

The claimant filed for unemployment insurance benefits with an effective date of March 25, 2018. The employer participated personally at the fact finding interview on April 6, 2018, by Rachael Kroeze.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant did not voluntarily quit work.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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). The claimant had no intention of quitting. The separation must be considered a discharge.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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:

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).

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). 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide any evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's April 9, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs