

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIMOTHY J KAYLOR
Claimant

PREMIER STAFFING INC
Employer

APPEAL 21A-UI-02364-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/09/20
Claimant: Appellant (2R)

Iowa Code § 96.5(2)a – Discharge from Employment

STATEMENT OF THE CASE:

On December 28, 2020, the claimant, Timothy J. Kaylor, filed an appeal from the December 23, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily left his employment with Premier Staffing, Inc. The parties were properly notified of the hearing. A telephonic hearing was held on Thursday, March 4, 2021. The claimant, Timothy J. Kaylor, participated. The employer, Premier Staffing, Inc., participated through Janelle Karrels, Office Manager. Claimant's Exhibit A was received and admitted into the record without objection.

ISSUES:

Did claimant Timothy J. Kaylor quit without good cause attributable to the employer or was his employment ended for disqualifying misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time with Premier Staffing, Inc., most recently as a temporary associate assigned to work in packaging at EcoLipse, beginning on January 27, 2020. Claimant's assignment at EcoLipse ended on March 16, 2020, due to Governor Reynolds' shutdown of all non-essential business amid the emerging COVID-19 pandemic.

Claimant remained in contact with Premier Staffing after his assignment ended. He checked in frequently to see if EcoLipse was open again so he could return to work. Claimant attempted to return to the assignment on May 9, 2020, after he was told by Premier Staffing that he was "on the list" and okay to return. When he arrived, claimant was stopped by an EcoLipse employee who told him he was not "on the list" and he needed to leave.

Claimant was offered one assignment other than EcoLipse in mid-May 2020, but he declined that assignment due to transportation issues. Premier Staffing had no other assignment available to offer him. Premier Staffing ended claimant's employment thirty days after he last reported to an assignment, pursuant to their internal policy.

REASONING AND CONCLUSIONS OF LAW:

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

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 unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left the employment. *Irving v. Empl. App. Bd.*, 15-0104, 2016 WL 3125854, (Iowa June 3, 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Empl't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Empl't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It 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 relationship, the case must be analyzed as a discharge from employment. *Peck v. Empl't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Here, there is no evidence that claimant voluntarily left his employment. Rather, the record establishes that claimant enthusiastically pursued his assignment through the employer at EcoLipse and sincerely wanted to return to that assignment. The employer offered nothing to indicate that it was claimant's choice to sever the employment relationship. Therefore, this separation will be considered a discharge from employment, and the employer bears the burden of establishing disqualifying, job-related 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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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.

Here, the employer offered testimony that claimant's employment ended after thirty days passed since he worked at a job assignment for the employer. Claimant's employment ending pursuant to this policy is not misconduct that disqualifies him from receiving unemployment insurance benefits based on this separation. Benefits are allowed, provided he is otherwise eligible.

The employer raised a credible concern regarding claimant's transportation, which could be affecting his availability for work and the earnestness of his work search. This matter will be remanded to the Benefits Bureau for further exploration of those issues.

DECISION:

The December 23, 2020 (reference 01) unemployment insurance decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

REMAND:

The issues of claimant's availability for work, given his transportation issues, and whether he is conducting an active and earnest work search are remanded to the Benefits Bureau of Iowa Workforce Development for further investigation, a fact-finding interview, and initial determination.



Elizabeth A. Johnson
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March 16, 2021
Decision Dated and Mailed

lj/scn