

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JACOB SECOR
Claimant

STEALTHBITS TECHNOLOGIES
Employer

APPEAL 18A-UI-10589-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/30/18
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2) – Discharge for Misconduct
Iowa Admin r. 871-24.32 – Discharge for Misconduct

STATEMENT OF THE CASE:

Jacob Secor, Claimant, filed an appeal from the October 22, 2018 (reference 01) unemployment insurance decision that denied benefits because he voluntarily quit work with Stealthbits Technologies due to dissatisfaction with the work conditions. The parties were properly notified of the hearing. A telephone hearing was held on November 7, 2018 at 9:00 a.m. Claimant participated. Employer participated through Danielle Potschantek, Human Resources Manager. Claimant's Exhibit A was admitted. The record remained open until noon on November 7, 2018 for employer to submit a memorandum and emails exchanged between the parties and to provide a copy to claimant; Claimant had until 4:30 p.m. on November 7, 2018 to submit an objection to any of employer's proposed exhibits. Employer submitted several documents before noon on November 7, 2018; claimant did not submit an objection. Those documents are Employer's Exhibit 1, which was admitted into evidence.

ISSUE:

Whether claimant's separation was a discharge due to disqualifying job-related misconduct or a voluntary quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a Systems Engineer from August 13, 2018 until his employment with Stealthbits Technologies ended on October 4, 2018. (Claimant Testimony; Potschantek Testimony) Claimant's direct supervisor was Kurtis Anderson, Lead Solutions Architect. (Claimant Testimony; Potschantek Testimony)

Claimant was hired as a remote employee (i.e. claimant would work from his home). (Claimant Testimony; Potschantek Testimony; Exhibit A) Claimant was not told that his status as a remote employee may change if he relocated to Wisconsin. (Claimant Testimony) When claimant accepted employer's job offer, he lived in Decorah, Iowa. (Exhibit A) Claimant later moved to Wisconsin. (Claimant Testimony; Potschantek Testimony) In mid-September and based on

claimant's relocation to Wisconsin, employer informed claimant he was required to report to employer's physical office in Madison, Wisconsin for work each day. (Potschanteck Testimony) The distance between employer's office in Madison and claimant's home is 43 miles. (Claimant Testimony)

In late September, employer sent claimant a memorandum to sign and return; the memo stated that claimant must begin reporting to the Madison office for work each day beginning October 1, 2018. (Claimant Testimony; Potschanteck Testimony) Claimant did not sign and return the memorandum. (Claimant Testimony; Potschanteck Testimony) Claimant also raised his concerns with reporting to the Madison office. (Claimant Testimony; Exhibit 1) Claimant reported to the Madison office on October 1, 2018, worked in the office until noon, and then attended meetings out of the office in the afternoon. (Claimant Testimony) Claimant worked from home and did not report to the Madison office on October 2, 2018 – October 4, 2018. (Claimant Testimony) On October 4, 2018, employer terminated claimant's employment due to job abandonment. (Exhibit 1; Potschanteck Testimony) Claimant had no intention to quit his employment. (Claimant Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant did not voluntarily quit his employment; claimant was discharged for a non-disqualifying reason. Benefits are allowed.

As a preliminary matter, employer's allegations of job abandonment shall be addressed. Iowa Code § 96.5(1) provides: "An individual shall be disqualified for benefits, if the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department." Voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Iowa Admin. Code r.871-24.25(4) provides:

Voluntary quit without good cause. . . . The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:
(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Iowa Admin. Code r.871-24.26(1) 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:
(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

Claimant had no intention of terminating his employment relationship with Stealthbits Technologies, so claimant did not voluntarily quit his employment. Claimant was not absent from work for three days; claimant worked from home October 2 – 4, 2018. Furthermore, even if claimant had voluntarily quit his employment, it would have been for good cause attributable to employer, because employer substantially changed the contract of hire from remote employment by requiring claimant to report to a physical office daily. Because claimant did not voluntarily quit his job, his separation must be evaluated as a discharge for misconduct.

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).

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).

The reason employer discharged claimant was because claimant failed to report to the Madison office. Claimant was hired as a remote employee and continued working as such. Employer alleged no issues with claimant's job performance other than the location of it. While claimant's refusal to report to the Madison office may be a valid reason for termination of employment, it is not misconduct within the definition of Iowa Administrative Code rule 871-24.32(1)(a). Employer has not met its burden of proving disqualifying, job-related misconduct. Benefits are allowed.

DECISION:

The October 22, 2018 (reference 01) unemployment insurance decision is reversed. Benefits are allowed provided claimant is otherwise eligible.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/rvs