

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NEAL ANDERSON
Claimant

BACKPOCKET BREWING LLC
Employer

APPEAL 20A-UI-09964-HP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/26/20
Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant Neal Anderson filed an appeal from an August 19, 2020 (reference 01) unemployment insurance decision that denied benefits he voluntarily quit his employment with Backpocket Brewing LLC (“Backpocket”) on March 5, 2020, for personal reasons. The parties were properly notified of the hearing. A telephone hearing was held on September 29, 2020. Anderson appeared and testified. No one appeared on behalf of Backpocket at the time of the hearing. Exhibit 1 was admitted into the record. I took administrative notice of the claimant’s unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

FINDINGS OF FACT:

On September 29, 2019, Anderson commenced part-time employment packaging beer for Backpocket. During his employment, Anderson worked an average of fifteen to twenty hours per week. Reid Overton was his immediate supervisor.

Anderson testified in January 2020, Backpocket did not have much work available and reduced Anderson’s hours to zero to ten hours per week for the month of January. Given the reduced hours, Anderson looked for another job. Anderson found another part-time job where he worked three days per week. Anderson testified he told Overton he could only work two days per week because he had to find another part-time job when Backpocket reduced his hours. Anderson reported he worked two days per week for five weeks while working his other job.

On March 9, 2020, Overton sent Anderson an e-mail as follows:

So with the addition of the canning line next week we are going to need team members with more availability throughout the work week. I have been told that our payroll system requires us to pay an amount per active employee so my supervisors wont allow me to hire anyone else unless we lose another employee.

You have always done great work and I would love to keep you on the team however if I am going to hire someone with more availability that would unfortunately mean that I could no longer keep you on the team. Let me know as soon as possible if you think your schedule will open up, otherwise I will need to hire up to prepare for the busy weeks to come.

(Ex. 1) Anderson testified he told Overton he could only work the two days per week because he worked at his other job, which paid a higher hourly rate, three days per week. Overton had previously agreed Anderson could work two days per week at Backpocket. No explanation was given why the payroll system and inability to hire additional employees. Anderson had been working two days per week for five weeks prior to the March 9, 2020 e-mail and he had agreed to continue working two days per week. Anderson believes Backpocket terminated his employment. Anderson reported he did not resign.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides an individual “shall be disqualified for benefits, regardless of the source of the individual’s wage credits: . . . If the individual has left work voluntarily without good cause attributable to the individual’s employer, if so found by the department.” The Iowa Supreme Court has held a “voluntary quit” means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer.” *Wills v. Emp’t Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989). A voluntary quit requires “an intention to terminate the employment relationship accompanied by an overt act carrying out the intent.” *Peck v. Emp’t Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). “Good cause” for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm’n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). The employer has the burden of proving that a claimant’s departure from employment was voluntary. *Irving v. Emp’t Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016).

871 Iowa Administrative Code 24.25 provides “[i]n 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.”

871 Iowa Administrative Code 24.26(1) also 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:

24.26(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.

“Change in the contract of hire” means a substantial change in the terms or conditions of employment. See *Wiese v. Iowa Dept. of Job Serv.*, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See *Dehmel*

v. Emp't Appeal Bd., 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. *Id.* An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See *Olson v. Emp't Appeal Bd.*, 460 N.W.2d 865 (Iowa Ct. App. 1990).

Anderson testified he did not resign from Backpocket and he believed he had been terminated because he would not accept additional hours. Anderson worked part-time for Backpocket. In January 2020, Backpocket reduced Anderson's hours to zero to ten hours per week. Anderson found another part-time job. He continued to work both part-time jobs, three days at his other job, and two days for Backpocket, if the work at Backpocket was available. Overton was aware Anderson had accepted other employment when Backpocket did not have regular work for him, and agreed he could work two days per week. Overton's March 9, 2020 e-mail does not provide how many hours Backpocket wanted Anderson to work, but indicates he needed to work additional hours. Overton had previously agreed Anderson could work two days per week at Backpocket. I find this constituted a change in the contract of hire, but I do not find Anderson voluntarily quit his employment. No explanation was given why Backpocket could not add an additional employee as set forth in the e-mail. Anderson testified Backpocket terminated his employment.

Under Iowa Code section 96.5(2)a,

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.

871 Iowa Administrative Code 24.31(1)a, defines the term "misconduct" 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 Iowa Legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 558 (Iowa 1979).

871 Iowa Administrative Code 24.32(4) also provides,

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.

871 Iowa Administrative Code 24.32(8) also provides:

Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer bears the burden of proving the employee engaged in disqualifying misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 11 (Iowa 1982) The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262, 264 (Iowa Ct. App. 1984)

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, 808 (Iowa Ct. App. 1984) The definition of misconduct in the administrative rule focuses on deliberate, intentional, or culpable acts by the employee. *Id.* When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* at 808-09. Negligence does not constitute misconduct unless it is recurrent in nature; a single act is not disqualifying unless it is indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986) Additionally, poor work performance is not misconduct in the absence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211, 213 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 666-69 (Iowa 2000) What constitutes misconduct justifying termination of an employee and what misconduct warrants a denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988) Instances of poor judgment are not misconduct. *Richers v. Iowa Dep't of Job Serv.*, 479 N.W.2d 308, 312 (Iowa 1991); *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 555 (Iowa Ct. App. 1986)

871 Iowa Administrative Code 24.32(7), provides, "[e]xcessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer." The Supreme Court has held 871 Iowa Administrative Code 24.32(7) accurately states the law. *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 190, n. 1 (Iowa 1984)

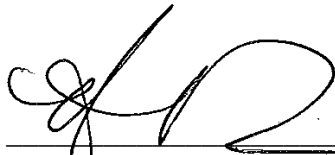
Excessive absences are not considered misconduct unless unexcused. *Cosper*, 321 N.W.2d at 10. Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to and including discharge for the absence under its attendance policy. *Gaborit v. Emp't Appeal Bd.*, 743 N.W.2d 554, 558 (Iowa Ct. App. 2007)

The determination of whether unexcused absenteeism is excessive requires consideration of past acts and warnings. *Higgins*, 350 N.W.2d at 192. The absences must also be unexcused. *Cosper*, 321 N.W.2d at 10. An absence can be unexcused if it did not constitute reasonable grounds or if it was not properly reported. *Id.*; *Higgins*, 350 N.W.2d at 191. Excused absences are those with “appropriate notice.” *Cosper*, 321 N.W.2d at 10. Absences in good faith, for good cause, and with appropriate notice are not misconduct. *Id.* Such absences may be grounds for discharge, but not for disqualification of benefits because substantial disregard for the employer’s interest has not been shown and this is essential for a finding of misconduct. *Id.*

There was no evidence presented at hearing Overton engaged in misconduct during his employment. According to Overton’s e-mail, Anderson had “always done great work.” (Ex. 1) I do not find he engaged in disqualifying misconduct. Benefits are granted.

DECISION:

The August 19, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is reversed in favor of the claimant/appellant. Benefits are allowed, provided the claimant is otherwise eligible.



Heather L. Palmer
Administrative Law Judge
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October 2, 2020
Decision Dated and Mailed

hlp/mh