

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RONALD J DIDIER
Claimant

EMW GROSCHOPP INC
Employer

APPEAL 16A-UI-11507-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/12/16
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Ronald J. Didier (claimant) filed an appeal from the October 21, 2016, (reference 01) unemployment insurance decision that denied benefits based upon the determination EMW Groschopp, Inc. (employer) discharged him for dishonesty in connection with his work. The parties were properly notified about the hearing. A pre-hearing conference was held on November 8, 2016. A telephone hearing was held on December 14, 2016. The claimant participated personally and was represented by Attorney Mormon Marlon. The employer participated through Vice President of Administration and Intern President Connie Vander Ploeg and was represented by Attorney Dan Harmelink. Claimant's Exhibits A through H were received into the record with no objection. Employer's Exhibits 1 through 3 were received into the record with no objection.

ISSUE:

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as an Engineer beginning on February 21, 1977. In 2009, he was promoted to President and was responsible for running the employer's business in the United States. He reported directly to the Board of Directors located in Germany. The claimant's last day worked for the employer was April 15, 2016.

In the early 2000's, the claimant wrote a computer program called MotorTec on his own time and using his own resources. From 2002 through 2004, the employer integrated MotorTec into its business. Neither party addressed ownership of MotorTec at that time. The employer has used MotorTec in its business on a daily basis since that time.

On November 3, 2015, Board Member Sebastian Pferdmenges (Sebastian) and Vice President of Administration Connie Vander Ploeg had an informal discussion with the claimant. At that time, Sebastian and Vander Ploeg were discussing German protections for businesses with regard to situations like those involving MotorTec. Sebastian asked the claimant who owned MotorTec and the claimant stated the employer did, although he had not sought legal counsel regarding this issue.

On January 6, 2016, the claimant met with the employer's counsel to discuss a two-year transition that the Board wanted to implement. On January 29, 2016, employer's counsel followed up with an email outlining the proposed transition plan. The employer was seeking to hire a new President over the course of the next two years. If the President was hired before the end of 2017, the claimant's role in the organization would decrease along with his compensation. Regardless of when or if a new President was hired, the claimant was expected to be transitioned out of the company by the end of the 2017. Finally, the employer asked the claimant for a plan to work on transitioning MotorTec to other employees to run and update.

On February 23, 2016, the claimant provided a detailed transition plan related to MotorTec. He was not sure how much time would be needed related to the transition of the software with upgrades requested and training other employees on the program. He asked for flexibility in the employer's timeline for the transition.

On March 11, 2016, employer's counsel presented the claimant with a "Transition Agreement and Release." The agreement outlined the same information with regard to a second President being hired and the claimant's changing role in the organization. Additionally, paragraph 4 of the agreement asked the claimant to formally acknowledge MotorTec was the employer's property and commit to deadlines related to the transitioning of MotorTec. Finally, paragraph 8 asked the claimant to acknowledge he had met with an attorney about the terms of the agreement and waive any legal claims he had against the company. The employer asked the claimant for a response by March 18, 2016.

On March 16, 2016, after consulting an attorney, the claimant rejected the employer's offer and made a counter-offer to the "Transition Agreement and Release." The claimant altered paragraph 4 to state he would retain full ownership of MotorTec and was willing to negotiate a license for the employer's use of the program. He also requested monetary compensation as consideration for his agreement to waive all claims against the employer.

On April 15, 2016, Vander Ploeg gave the claimant a letter written by Board Member Henning Pferdmenges (Henning) which suspended his employment. Henning expressed concern and disappointment in the claimant's claim that he now owned MotorTec despite the conversation on November 3, 2015. The employer felt the trust between it and the claimant had been broken and that the claimant as President was not acting in the employer's best interest. Henning told the claimant he had until May 4, 2016 to accept the employer's agreement and resign immediately or he would be terminated.

On May 4, 2016, the claimant declined the employer's request. The employer did not terminate the claimant at that time. The claimant and employer agreed to mediate their disputes and, on September 30, 2016, the parties reached an amicable agreement in which the claimant agreed to resign his employment and relinquish all claims to MotorTec in exchange for monetary compensation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not voluntarily quit his employment but was discharged for no disqualifying reason. Benefits are allowed.

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 his 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. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp'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. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). Additionally, if an individual is unemployed due to a disciplinary suspension or layoff, he or she is considered to have been discharged from employment and the issue of misconduct must be resolved. Iowa Admin. Code r. 871-24.32(9).

The parties dispute when the claimant separated from employment. The claimant was initially separated from employment on April 15, 2016 when he was placed on a disciplinary suspension. He was told at that time that he could voluntarily resign or he would be terminated. The employer clearly stated that there was no continuing work available for him. The employer has not met the burden of proof to show the claimant made a voluntary choice to end the employer relationship; therefore, the case must be analyzed as a discharge.

The issue becomes whether the claimant was discharged for misconduct. Iowa regulations define misconduct:

“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.

Iowa Admin. Code r. 871-24.32(1)a. 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. 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). 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 (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." Additionally, the misconduct must be a current act in order to be disqualifying. Iowa Admin. Code r.871-24.32(8).

A lapse of 11 days from the final act until discharge when claimant was notified on the fourth day that his conduct was grounds for dismissal did not make the final act a "past act." Where an employer gives seven days' notice to the employee that it will consider discharging him, the date of that notice is used to measure whether the act complained of is current. *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988). An unpublished decision held informally that two calendar weeks or up to ten work days from the final incident to the discharge may be considered a current act. *Milligan v. Emp't Appeal Bd.*, No. 10-2098 (Iowa Ct. App. filed June 15, 2011).

The employer gained knowledge of the claimant's alleged dishonesty on March 16, 2016 when he claimed ownership of MotorTec. However, it did not place him on disciplinary suspension until April 15, 2016, a month later. Because the act for which the claimant was suspended was not current and the claimant may not be disqualified for past acts of misconduct, benefits are allowed.

In the alternative, even if the claimant's alleged misconduct was a current act, the claimant would still be eligible for benefits. The employer had knowledge that the MotorTec program had been utilized prior to the claimant becoming President. Neither party discussed the ownership of the program at the time of implementation or when the claimant became President. The employer opened the door to the negotiations when it asked the claimant to sign a legally binding agreement giving away any rights he may have to the computer program. This prompted the claimant to seek legal advice to resolve this issue. The claimant's position on ownership changed after receiving legal advice. Any reasonable person in a similar situation would likely do the same. The employer has not established that the claimant was willfully or deliberately dishonest.

DECISION:

The October 21, 2016, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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