

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICHOLAS J WALLRAFF
Claimant

AUTOBASE INC
Employer

APPEAL 19A-UI-09593-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/27/19
Claimant: Respondent (2)

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer/appellant, Autobase Inc., filed an appeal from the November 26, 2019 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 2, 2020. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Lauren LaBella, human resources director.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Employer Exhibits 1-7 were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?
Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer’s account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a highway helper and was separated from employment on November 1, 2019, when he quit the employment. Continuing work was available.

The employer contracts with the state of Iowa to provide roadside assistance to stranded motorists. The claimant had previously worked for the prior contractor before this employer assumed the contract. He began employment on August 26, 2019 and was expected to work full-time. He was informed his schedule would be either 5:00 a.m. - 1:00 p.m. or 1:00 - 9:00. When hired, the claimant informed the employer that he also worked in some capacity as a

firefighter assigned to forest fires. The employer stated it is common for firefighters to be hired and that they accommodate the other employment, provided that they receive two weeks' notice if they will be gone more than one week, or can get the shifts covered. The claimant was informed of this expectation at hire.

The claimant worked one shift on August 26, 2019. He then left from August 27 - September 5, 2019 without proper notice or permission to tend to a fire. As a result, he missed 3 of 4 training shifts. The claimant returned to work and worked his shifts September 9 - 27, 2019. He was verbally warned that he must give proper notice to leave work for an extended period of time.

On September 30, 2019, the claimant told the employer he was leaving on October 5, 2019 and would need to be gone another two weeks. The employer warned the claimant that he did not have permission to be absent because he had no coverage. The claimant informed the employer that he would be gone regardless of permission. He did not work his shifts on October 3 or 4, 2019. He was then absent October 7 - 20, 2019. The claimant was expected to return to work on October 21, 2019 and was a no-call/no-show. On October 22, 2019, the claimant was called by the employer. Because the claimant was not working his required shifts, the employer had to hire a new employee for reliable coverage of shifts.

The employer informed the claimant that because he was not working full-time shifts, for which he was hired, he would be moved to a part-time status, and scheduled 24-30 hours per week, with the ability to pick up extra shifts. Because he would no longer be full-time, he would have lost his benefits including health insurance. The claimant decided to quit rather than work the new schedule.

The claimant then established a claim for unemployment insurance benefits with an effective date of October 27, 2019. He has a weekly benefit amount of \$331.00 but has not received benefits since filing his claim. The employer did participate in the fact-finding interview on November 15, 2019 by way of Lauren LaBella.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was demoted because of job misconduct and voluntarily left the employment without good cause attributable to the employer.

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.

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.

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.

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). 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

These principles apply also to disciplinary demotions, as was the case here. An employer may discharge or discipline an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation or discipline, employer incurs potential liability for unemployment insurance benefits related to that separation or discipline.

In this case, the claimant was hired to work full-time and informed that he would need to give the employer proper notice to leave for extended periods of time for his other job. In the claimant's two months of employment, he twice left for over ten days, without providing the employer proper notice or opportunity to cover his shifts. Cognizant that the claimant disclosed he had other employment, he agreed to work full-time for *this* employer in exchange for certain benefits like health insurance. He did not meet that condition of employment. When he did not and was warned he could not continue to leave without appropriate notice, he told the employer he would leave regardless of permission granted. The administrative law judge is persuaded the claimant knew or should have known his conduct was contrary to the best interest of the employer. In response, the employer demoted him to part-time employment and filled his position so it could comply with business needs. An employer has the right to allocate personnel in accordance with the needs and available resources. *Brandl v. Iowa Dep't of Job Serv.*, (No. ___ / ___ - ___, Iowa Ct. App. filed ___, 1986).

While the circumstances might be considered a change in the contract of hire, the employer has established misconduct as the reason for the demotion. Therefore, based on the evidence presented, the claimant's decision to quit because of that was without good cause attributable to the employer. Benefits are denied.

Because the claimant's separation was disqualifying, benefits were originally allowed. However, he did not receive any benefits and therefore there is no overpayment in accordance with Iowa Code § 96.3(7). The administrative law judge further concludes the employer did satisfactorily participate in the fact-finding interview pursuant to Iowa Code § 96.3(7), Iowa Admin. Code r. 871-24.10.

DECISION:

The November 26, 2019 (reference 01) initial decision is reversed. The claimant was demoted because of job misconduct and voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jennifer L. Beckman
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Decision Dated and Mailed

jlb/scn