

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

TERRY L YOUNG
Claimant

APPEAL NO: 13A-UI-06582-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BLAZIN' WINGS INC
Employer

OC: 05/12/13
Claimant: Appellant (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Terry L. Young (claimant) appealed a representative's May 30, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Blazin' Wings, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 12, 2013. The claimant participated in the hearing. Bill Stasek of Equifax Workforce Solutions appeared on the employer's behalf and presented testimony from one witness, Mark Hill. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on or about September 22, 2008. He worked full time as a cook at the employer's Cedar Rapids, Iowa restaurant, usually 8:00 a.m. to 4:00 p.m. Monday through Friday. His last day of work was May 14, 2013.

On May 14 the claimant was working his morning shift and was unloading a truck and doing prep work. Another cook was to be working with him, but this other cook was not working when there was not a manager around to observe. The claimant had previously complained to various managers about this other cook not working as he should or doing his share of the work. On May 14 he determined that he was not going to continue working with the other employee until he forced management to deal with the problem with the other employee. He approached Hill, the manager on duty, at about 11:00 a.m. and stated only that he needed to leave and that he wanted to speak to the general manager. He refused to tell Hill why he wanted to speak to the general manager and did not discuss his concern with Hill, as he concluded that since Hill was the only manager on duty at that time that he could not take Hill's time to discuss his issue with the other employee.

When the claimant refused to tell Hill why he needed to leave or why he wished to speak to the general manager, Hill told the claimant that if he left, it would be considered job abandonment and that he would be written up. The claimant persisted and then left. After the claimant left Hill reviewed the claimant's file and learned that the claimant had prior no-call/no-shows, and had been given a final warning in August 2012 as a result. Due to the claimant's prior record and the claimant's walking off the job despite Hill's warning on May 14, the employer determined to discharge the claimant. When the claimant spoke to the general manager on May 15, the general manager informed the claimant that he was discharged for walking off the job on May 14 despite Hill's warning, in light of his prior no-call/no-shows.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a. Rule 871 IAC 24.25 provides that, in 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did not exhibit the intent to quit when he left, as he was expressing an intention to speak to other management and continue his employment. *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). The separation was not a quit, but a discharge.

Before the claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982); Iowa Code § 96.5-2-a. In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The claimant's walking off the job without even trying to address his concerns that day with the manager on duty and after being directly warned that it was considered job abandonment would result in discipline, particularly after prior warnings for being a no-call/no-show for work, shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. The employer discharged the claimant for reasons amounting to work-connected misconduct.

DECISION:

The representative's May 30, 2013 decision (reference 01) is affirmed. The employer discharged the claimant for disqualifying reasons. As of May 15, 2013, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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