

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

---

**RANDY A MATTHEWS**  
Claimant

**APPEAL NO. 14A-UI-06385-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE HON COMPANY**  
Employer

**OC: 05/18/14**  
**Claimant: Respondent (1)**

---

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated June 11, 2014, reference 01, which concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 15, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Sandra Linsin participated in the hearing on behalf of the employer with a witness, Cherie McClusky.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a utility worker from July 2012 to May 8, 2014. He was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled. The claimant worked an overnight shift starting at 10:00 p.m. The claimant received a warning regarding absenteeism on April 17, 2014 and was informed that he had two attendance credits remaining. Employees who exhaust their attendance points are subject to termination.

The claimant requested vacation for the May 11 shift. The claimant's supervisor told him he could have the shift off if he arranged for the other utility worker to cover his shift. The claimant talked to the other utility worker who agreed to work for the claimant on May 11. He notified his supervisor that he had found his own replacement for the May 11 shift.

The claimant was absent for his May 8 shift because he was in Iowa City at the hospital with an uncle with terminal cancer. He properly notified the employer about his absence.

The claimant took his vacation day on the May 11 shift. For some reason, the employer considered the claimant absent without notice on May 11. The claimant's badge that is used to enter the plant was disabled. The claimant reported to work as scheduled on May 12 but could not enter the plant because his badge was disabled. Two coworkers who were present told the claimant that he had been terminated because he had pointed out and he could not enter the

plant. The claimant asked to talk to his supervisor and waited about 10 minutes outside the plant. No one came outside so he left the plant. The claimant called his supervisor but the supervisor did not answer and he could not leave a message because the supervisor's voice mail was not set up. The claimant reasonably believed that his employment was terminated.

About a week later the claimant later contacted a Human Resources representative and explained what had happened, but by that time the employer considered the claimant to have voluntarily quit.

#### **REASONING AND CONCLUSIONS OF LAW:**

The 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. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992). I conclude that the claimant was discharged for exhausting his attendance credits. He never intended to quit his employment.

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

I believe the claimant's testimony that he had arranged for his own replacement and had approval to take vacation on May 11. I also believe his testimony that he had reported to work as scheduled the next day only to find that his badge would not work and other employees told him that he had been terminated. He waited to talk to his supervisor and called him but was not able to speak with him. He reasonably believed he had been discharged. No willful and substantial misconduct has been proven in this case.

#### **DECISION:**

The unemployment insurance decision dated June 11, 2014, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/can