

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SEAN T BRUCE**

Claimant

**APPEAL NO. 11A-UI-07759-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CLEARY BUILDING CORP**

Employer

**OC: 02/27/11**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated June 8, 2011, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 11, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Jay Sandry. Kendall Bailey participated in the hearing on behalf of the employer with witnesses, Jered Weber and Sue Oliver. Exhibits One and A were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a foreman from August 16, 2010, to May 11, 2011. The employer is a company that builds post-frame buildings. In the claimant's job, he supervised a building crew. His supervisor was the branch manager, Jay Sandry.

The claimant and his crew had been working on a building in Kellogg, Iowa. On May 12, the claimant was sick and unable to work. He notified Sandry in the morning about his illness and that he would contact Sandry when he was feeling better. He called Sandry over the lunch hour and said he was feeling better and would be reporting to work on May 13 with his crew to finish the building he was working on in Kellogg.

Sandry responded that the employer decided to send another foreman and crew to finish the job in Kellogg and the claimant and his crew would be doing some repair jobs. On May 13, both the claimant's repair work and work at the job site in Kellogg were rained out.

The claimant reported to work as scheduled on Monday, May 16, and spoke to Sandry. Sandry told the claimant that he was supposed to have reported to the building's job site on Sunday and the building in Kellogg had to be finished by noon on May 16. Sandry told the claimant that the other foreman would be finishing the building in Kellogg and the claimant would be doing repair work. The claimant had no knowledge about needing to go to the job site on Sunday. He asked

Sandry whether the employer was going to have him build anymore buildings and why the employer was sending another foreman to finish his job. Sandry told the claimant that the employer did not have any confidence in him constructing buildings anymore. Sandry then told the claimant that since he had missed work on May 12 and did not report to work on Sunday, he was going to have to take action and let him go.

Sandry prepared a notice of termination. He checked that the termination was involuntary and explained that the claimant had refused to return to work due to the company's loss of confidence in his abilities. The claimant stated on the form that the company no longer trusted his judgment because it sent the other foreman to his jobsite and had him doing repairs. The claimant never refused to work but simply complained about not getting to finish the building he had been working on just because he was absent on May 12. Sandry actually quit work on May 16. The claimant, however, was unaware of this and understood that Sandry had discharged him.

### **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).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The preponderance of the evidence establishes that Sandry discharged the claimant on May 16, 2011, and he did not intend to quit his job. The Notice of Termination states the claimant's termination was involuntary. The claimant reasonably believed based on the notice and his conversation with Sandry that he was being terminated. He did not refuse to continue working but instead complained about not being allowed to finish the building he started. The claimant was unaware that Sandry planned to quit that day.

The next 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).

No willful and substantial misconduct has been proven in this case. The claimant was absent with proper notice on May 12. He was unaware that he was supposed to work on Sunday. He did not refuse to continue working but instead complained about not being allowed to finish the building he started. This does not amount to disqualifying misconduct.

**DECISION:**

The unemployment insurance decision dated June 8, 2011, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs