

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**RICK L GREEN**  
Claimant

**FERGUSON ENTERPRISES INC**  
Employer

**APPEAL 14A-UI-11857-LT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/19/14**  
**Claimant: Respondent (2R)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the November 7, 2014, (reference 01) unemployment insurance decision that allowed benefits based upon voluntarily quitting the employment. The parties were properly notified about the hearing. A telephone hearing was held on January 5, 2015. Claimant did not respond to the hearing notice instruction and did not participate. Employer participated through claimant's direct supervisor Waterloo branch manager Ash Larsen, operations manager for Eastern Iowa Rox Simmons, and general manager for Eastern Iowa Nathan Knollenberg.

**ISSUES:**

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge 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: Claimant was employed full time as a warehouse worker/driver for the plumbing wholesaler from April 2010, and was separated from employment on October 14, 2014, when he was discharged. He was on an intermittent leave of absence from July 7, 2014, through the separation date due to a back injury with disputed work-relatedness. His light-duty medical restrictions note limited his lifting to 20 pounds but did not restrict the hours per week he could work. The employer accommodated the 20-pound lifting restriction. On August 12 Larsen, in a conference call with claimant and Simmons, asked him to work 50 hours per week, as they had done with other employees due to increased business. He agreed. A week later on August 19 he left two hours early without permission and was warned in writing on August 20, 2014. Claimant had previously told warehouse lead worker Chad Tate he would not work 50 hours per week and employer would have to fire him because of his side business and deer-hunting season. He was warned in writing on October 13, 2014, for the same reason. Larsen told him the morning of October 14 if he left early that day Larsen would assume he would not be working there any longer but offered to let him cut his hours to 45 per week or use vacation

hours to leave early. Claimant declined and later reported to Larsen before the shift end and told him he was leaving early and assumed he was fired. Larsen said he was so claimant turned in his keys and left. He did not say his back was giving him problems as a reason for leaving early. Nor did he say how he would be able to hunt deer with a 20-pound lifting restriction. Claimant did not quit because of an alleged change in the terms of hire.

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

For the reasons that follow, the administrative law judge concludes the claimant did not voluntarily quit but was discharged from employment due to job-related misconduct.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The employer has presented substantial and credible evidence that claimant agreed to work 50 hours per week but left work early three times without permission and did not provide medical documentation limiting the number of hours he could work when the employer

accommodated the lifting restriction, even though the work relatedness of the injury is disputed. Claimant leaving early without permission after having been warned is disqualifying misconduct.

In the alternative, even were the claimant considered to have voluntarily quit because of the addition of ten hours to his weekly scheduled shifts, the separation would be without good cause attributable to the employer. He acquiesced to the addition of ten hours weekly in the phone conference on August 12, acknowledged those hours with Tate, worked some 50-hour weeks, and because the reasons for not wanting to work the additional hours were not medically related or supported.

**DECISION:**

The November 7, 2014, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

**REMAND:** The overpayment and fact-finding participation issues pursuant to Iowa Code § 96.3(7) and Iowa Admin. Code r. 871-24.10 respectively, although clearly set out on the hearing notice, are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination because claimant did not participate in this hearing that addressed the separation from employment.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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