

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

RONALD J KOCH
321 GROVE
PO BOX 208
CENTRAL CITY IA 52114

TYSON RETAIL DELI MEATS INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-04909-SWT
OC 03/28/04 R 03
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 20, 2004, reference 01, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on May 27, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Brooke Salger participated in the hearing on behalf of the employer. Exhibits One through Four were admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a laborer from June 9, 2003, December 3, 2003. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled. Under the employer's attendance policy, employees are assessed points for unscheduled absences and tardiness and subject to termination if they reach 14 points. On November 13,

2003, the claimant received a warning because he was at 10 points after calling in sick on November 12.

On December 4, 2003, the claimant was informed that he was terminated due to excessive absenteeism after he was absent from work due to car problems on November 28, which caused him to receive his 14th point. Many of the points the claimant had received were due to his wife's medical condition. The human resources manager, Brooke Salger, informed the claimant that if he brought in medical documentation, his termination might be reconsidered. The next day, the claimant was hospitalized due to what was later diagnosed as a heart attack. The claimant's wife called Salger and explained what had happened. Salger agreed to rescind the termination. Salger told the claimant's wife that they would need to have someone contact the employer each day if the claimant was not able to work. The claimant's wife informed the claimant that they were supposed to keep the employer notified about his status but did not tell him that a call needed to be made each day. When the employer had not heard from the claimant by December 10, 2003, Salger determined that the claimant had voluntarily quit his employment and had a form prepared to that effect sent to the claimant and Iowa Workforce Development Department.

The claimant was released from the hospital around December 10, 2003. The claimant immediately contacted Salger to inform her that he was out of the hospital. The claimant was informed that he was considered to have quit his employment because the employer had not received a telephone call each day that he was absent. The claimant did not intend to quit his employment and was unable to contact the employer himself during his hospitalization. The employer discharged the claimant because he was absent without notice after December 5.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code Sections 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). In this case the claimant did not intend to quit his employment. The separation must be treated as a discharge based on the claimant's failure to notify the employer regarding his absences after December 5.

871 IAC 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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

While the employer may have been justified in discharging the claimant, no current act of work-connected misconduct as defined by the unemployment insurance law has been established in this case. The claimant's final absences were due to legitimate medical reasons. The employer was notified about the claimant's hospitalization and the reasons why. The claimant was not able to inform the employer personally because of his medical condition and was unaware that the employer was requiring a daily call. The claimant contacted the employer immediately after his release from the hospital, but was informed that his employment had been terminated.

DECISION:

The unemployment insurance decision dated April 20, 2004, reference 01, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/b