

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN R RICH
Claimant

APPEAL NO. 06A-UI-10030-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLOVERLEAF COLD STORAGE CO
Employer

**OC: 09/10/06 R: 01
Claimant: Appellant (1)**

Section 96.5-2(a) – Discharge for Misconduct
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant appealed from an unemployment insurance decision dated October 4, 2006, reference 02, that concluded the claimant voluntarily left employment under disqualifying conditions. After notices were sent, a telephone hearing was conducted from Des Moines, Iowa, on October 30, 2006. The claimant participated and testified. Participating as a witness for the employer was Ms. Jean Elkins.

ISSUES:

Did the claimant voluntarily leave employment for reasons not attributable to the employer?

Was the claimant discharged for misconduct in connection with the work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Brian Rich was employed by Cloverleaf Cold Storage from October 22, 1992, until September 11, 2006, when he was given the choice of being discharged or resigning his employment. Mr. Rich held the position of plant manager, was employed on a full-time basis, and was paid by salary. The claimant's immediate supervisors were Mr. Ron Graham and Mr. Tim Gibbs.

The claimant was given the choice of being discharged or submitting a resignation from employment on September 11, 2006, during a meeting held by company management. The claimant had been assigned to work as an acting manager at a Cloverleaf facility in the state of Ohio for approximately five months. After the claimant had declined taking the position on a permanent basis, he was returned to the Sioux City facility. A decision was made to terminate Mr. Rich based upon his violation of company policy by utilizing a company credit card for personal reasons and because of complaints that the claimant had engaged in harassing behavior toward a female management person who had temporarily been assigned to work with him at the Ohio facility. Mr. Rich had been warned by e-mail in August 2006 not to use company credit cards for personal purchases or services. The claimant had purchased an airline ticket for a female friend to fly from Sioux City, Iowa, to Ohio with the company card and

had bought lunch for that individual using the company's credit card. Although the company had warned Mr. Rich, he continued to make other purchases with the credit that the company deemed were inappropriate. A primary reason for the claimant's discharge was the allegation that the claimant had acted inappropriately in working with a female management person before his return to Sioux City, Iowa. It appears that the female had indicated to the company that Mr. Rich had engaged in inappropriate and unwanted conduct and therefore the individual officially complained. Mr. Rich had a short-term personal relationship with the female in question and believes that she complained to the company to retaliate against him.

REASONING AND CONCLUSIONS OF LAW:

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).

The evidence in the record establishes that the claimant left his employment only because he was given the choice of resigning or being discharged. The decision to separate Mr. Rich was made by company management based upon Mr. Rich's inappropriate use of a company credit card while on a temporary assignment in the state of Ohio. The claimant was also discharged because a female management worker at that location had made a serious allegation indicating that the claimant had engaged in inappropriate and unwanted harassing conduct in the workplace.

Mr. Rich does not deny using the company's credit card for airfare for a female friend to fly to the state of Ohio and does not deny using the credit card to purchase lunch for this same individual. Although the claimant maintains that his intention was to repay the company, the administrative law judge notes that 30 or more days had elapsed since the purchase and the claimant had not informed the company of the manner in which he utilized their credit card or of his intention to make restitution. Mr. Rich was aware of the company's policy which prohibits harassment of employees. He nevertheless engaged in a personal relationship with a management individual in the state of Ohio and the evidence establishes that, for whatever reason, unwelcome conduct on the part of Mr. Rich toward the female worker took place on the

job site in violation of company policy. Based upon the claimant's misuse of the company credit card after being warned and his violation of the company's anti-harassment policies, the decision was made to terminate Mr. Rich from his employment.

Although it is understandable that Mr. Rich might feel that his discharge was related to his decision not to take a permanent position in the state of Ohio, the administrative law judge must nevertheless rule that the hearing record establishes the claimant's conduct was in disregard of the employer's interests and reasonable standards of behavior that the employer had a right to expect of its employees under the provisions of the Iowa employment security law. The administrative law judge must therefore rule that the claimant's separation from unemployment took place under disqualifying conditions.

DECISION:

The Agency representative's decision dated October 4, 2006, reference 02, is affirmed. The claimant was discharged under disqualifying conditions and is not eligible to receive unemployment insurance benefits until he has work and received wages equal to ten times his weekly benefit amount in insured work, provided that he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/pjs