

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KHAILI A YAHYA
Claimant

APPEAL NO. 14A-UI-00184-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEE ZEE INC
Employer

**OC: 11/10/13
Claimant: Appellant (2)**

Section 96.5(1) – Quit
Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Khaili Yahya, filed an appeal from a decision dated December 31, 2013, reference 03. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on January 29, 2014. The claimant participated on his own behalf and Zahra Bouhouch acted as interpreter. The employer, Dee Zee, participated by Human Resources Assistant Lacey Leichter.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer or whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Khaili Yahya was employed by Dee Zee from October 13 through 17, 2013, as a full-time assembler. The claimant was “not catching on” to his duties and was being issued disciplinary action by his supervisor.

The employer maintains the supervisor told Mr. Yahya to go talk to “someone in human resources” if he disagreed with the write ups. When he arrived at human resources office he spoke with Payroll Administrator Goran Surlan to whom he tendered his resignation. The reason cited on the termination reports was “not able to follow requirements of the position.”

Mr. Yahya maintains he was sent to the human resources office by his supervisor when he arrived at work on October 17, 2013, and when he arrived there he was fired.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The claimant denies he voluntarily quit. The employer's witness did not have any firsthand, eyewitness knowledge of the exchange between the claimant and the human resources representative. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge cannot therefore accept the employer's testimony in light of the claimant's denial of a voluntary quit.

Iowa Code section 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.

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.

Since it cannot be concluded the claimant quit, it must be determined he was discharged. The wording of the separation paperwork would tend to support this as one does not quit due to not being "able to follow requirements of position."

The employer did not provide any evidence of willful misconduct and disqualification may not be imposed.

DECISION:

The unemployment insurance decision dated December 31, 2013, reference 03, is reversed. Khaili Yahya is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs