

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BILLY BAKER**  
Claimant

**APPEAL NO: 12A-UI-09217-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FARLEYS & SATHERS CANDY CO INC**  
Employer

**OC: 07-01-12**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the July 25, 2012, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 23, 2012. The claimant participated in the hearing. Robin Travis, human resources manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time Packer I for Farley's & Sathers Candy Company from August 17, 2009 to July 2, 2012. The claimant worked the 11:00 p.m.-to-7:30 a.m. shift. On Saturday, June 30, 2012, the plant was taking inventory and the claimant was assigned to work overtime. Employees are allowed to opt out of overtime if they notify a manager or supervisor they would like to take an attendance point rather than work the required overtime. On June 30, 2012, the claimant was informed he was needed to work four hours of overtime. He had already worked 22 hours of overtime that week and decided he would take an attendance point instead, as he only had one attendance point on a scale of eight in a rolling calendar year and had not received any warnings about his attendance. The claimant did not notify a manager or supervisor or call the employer's call-in number to state he was not going to work the overtime but wanted to take an attendance point instead. He did tell another hourly employee with a radio he was leaving. The employer met with the claimant Monday, July 2, 2012, to discuss the situation and the claimant admitted he did not inform a manager or supervisor he was leaving. The claimant did not intend to quit his job, as evidenced by the fact he reported for his next scheduled shift. Additionally, he did not know he was placing his job in jeopardy for leaving and believed he would just receive an attendance point for failing to work the required overtime. The employer determined the claimant's actions were job abandonment and considered the claimant to have voluntarily quit his job.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). Here, the claimant clearly did not intend to quit his job. While the claimant left without notifying the employer he was not going to work the required overtime and wanted to take an attendance point instead, he did not intend to voluntarily quit his job. He also reported for his next scheduled shift, indicating he had no intention of quitting his job with the employer.

The employer has the burden of proving disqualifying misconduct. 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). The claimant did leave without working the required overtime and did not notify a manager or supervisor he was leaving

and wanted to take an attendance point. However, the claimant had not received any warnings regarding his attendance, only had one attendance point at the time, and was in good standing with the employer, with the exception of this one incident. Because the claimant's behavior June 30, 2012, was an isolated incident of misconduct, the administrative law judge must conclude the claimant's actions do not rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

**DECISION:**

The July 25, 2012, reference 01, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw