

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

APOLINAR GONZALEZ MARTINEZ
Claimant

APPEAL NO: 10A-UI-08389-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DCS SANITATION MANAGEMENT INC
Employer

OC: 04/25/10
Claimant: Appellant (2)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Apolinar Gonzalez Martinez (claimant) appealed an unemployment insurance decision dated June 8, 2010, reference 01, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with DCS Sanitation Management, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 29, 2010. The claimant participated in the hearing. Ike Rocha interpreted on behalf of the claimant. The employer participated through Lori Freimuth. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time general laborer from July 6, 2009 through May 7, 2010. His last day of work was April 3, 2010 and he was taken off work after that by his physician for a non-work-related medical condition. The claimant provided a medical release to the employer on April 26, 2010 which allowed him to return to work two weeks after that date. He was scheduled to return to work on May 10, 2010 but when he went to the work site to pick up his paycheck on May 7, 2010, he was told he no longer had a job and his identification badge was taken from him.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

The employer contends the claimant voluntarily quit because he never returned to work after he was released by his physician. However, the employer witness admitted the claimant's identification badge had been taken from him but vacillated on which date it was taken. There was no question in the claimant's mind that he was told he no longer had a job and his badge was taken from him on May 7, 2010. The claimant's testimony is relied upon and it must now be determined whether the employer discharged the claimant for disqualifying reasons.

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.

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.

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 claimant's identification badge was taken from him on May 7, 2010 when he had not yet been released to return to work. The claimant's separation from employment was not due to any misconduct on his part nor did he quit his job. The claimant is qualified to receive unemployment insurance benefits, provided he is otherwise eligible.

DECISION:

The unemployment insurance decision dated June 8, 2010, reference 01, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css