

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

LUIS CUEVAS
129 TAFT CIRCLE
OTTUMWA IA 52501

MC WANE INC
CLOW VALVE COMPANY
902 S 2ND ST
OSKALOOSA IA 52577

Appeal Number: 05A-UI-04200-DWT
OC: 03/20/05 R: 03
Claimant: Appellant (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:

Luis Cuevas (claimant) appealed a representative's April 7, 2005 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Clow Valve Company (employer) would not be charged because the claimant had been discharged for disqualifying reasons. Initially, a hearing was scheduled on May 12, 2005. The hearing was continued so a certified interpreter could interpret the hearing. After hearing notices were again mailed to the parties' last-known addresses of record, a telephone hearing was held on May 25, 2005. The claimant participated in the hearing. Rosie Paramo-Ricoy interpreted the hearing. David Cummins, the human resource manager, appeared on the employer's behalf. During the hearing, Employer's Exhibit One was offered and admitted as evidence. 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:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on July 12, 2004. The claimant worked as a full-time employee. Initially, the claimant worked first shift. In January 2005, the claimant made a complaint against his supervisor. Even though the employer investigated the claimant's complaint, the claimant incorrectly concluded the employer did nothing.

Upon the claimant's request, the employer transferred the claimant to third shift. The employer understood the claimant wanted the transfer because it was difficult to find childcare when both the claimant and his wife worked first shift.

Shortly prior to March 22, the claimant became involved in an incident with a co-worker. The employer concluded the claimant and a co-worker engaged in horseplay. Both employees were suspended. The claimant did not believe the employer treated him fairly because a supervisor, D., twisted the truth. The claimant was to be suspended on March 23.

Recently, the claimant heard that D. had threatened him. The claimant reported problems he had with D. to EEOC. On March 22, 2005, the claimant told Cummins he had reported D. to the EEOC and this commission would be investigating his complaints. While Cummins indicated the employer would investigate the claimant's issues, it would take some time. After the claimant asked if he was terminated, the employer checked the status of the claimant's attendance points. The employer discovered the claimant had $\frac{3}{4}$ points left and told him if he did not report to work that night, he would not have any points and would be terminated. The claimant indicated he understood. The claimant did not report to work for his scheduled shift on March 22. The claimant did not contact the employer again. On March 23, 2005, the employer terminated the claimant's employment relationship because he violated the employer's attendance policy.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The evidence establishes the employer discharged the claimant on March 23, 2005.

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Even though the employer planned to suspend the claimant from work on March 23 for engaging in horseplay, the employer also suspended the other employee who was involved in this incident. If the claimant had reported to work on March 22, his employment would have continued. Instead, the claimant made the decision he would not report to work even though he knew he would be discharged if he did not report to work as scheduled. During the conversation between the claimant and Cummins on March 22, the claimant did not indicate he was quitting or that he would not be at work as scheduled at 8:00 p.m. The claimant just failed to report to work or contact the employer anytime after March 22. The claimant's failure to report to work and contact the employer amounts to an intentional and substantial disregard of the employer's interests. The employer discharged the claimant for reasons constituting work-connected misconduct.

In the alternative, the claimant's failure to report to work anytime after March 22 could be considered a voluntary quit. Even though the claimant testified that he intended to continue working for the employer, his actions contradict his testimony. The claimant asserted he did not report to work on March 22 because he concluded the employer did not treat him fairly. The evidence does not support these assertions. The claimant also testified that he felt threatened by D. Again, a preponderance of the credible evidence does not establish that D. threatened the claimant. After the employer learned on March 22 the claimant considered D. to have threatened him, the employer told the claimant this issue would be investigated. By failing to return to work, the claimant did not give the employer an opportunity to do this investigation. Ultimately, the claimant's decision that he would not report to work on March 22 or anytime thereafter, establishes the claimant initiated his employment separation without good cause or that he intentionally failed to work as scheduled even though he knew his job was in jeopardy. The claimant is not qualified to receive unemployment insurance benefits as of March 20, 2005.

DECISION:

The representative's April 7, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of March 20, 2005. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

dlw/sc