

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BENITO GONZALEZ III
Claimant

APPEAL NO. 11A-UI-15018-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOHERTY STAFFING SOLUTIONS
Employer

**OC: 10/02/11
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Doherty Staffing Solutions filed a timely appeal from an unemployment insurance decision dated November 14, 2011, reference 03, that allowed benefits to Benito Gonzalez III. After due notice was issued, a telephone hearing was held December 29, 2011 with Unemployment Insurance Administrator Glenda Niemiec and On-Site Manager Kim Johnson participating for the employer. Employer Exhibit One was admitted into evidence. Mr. Gonzalez did not provide a telephone number at which he could be contacted.

ISSUE:

Was the claimant's separation from employment a disqualifying event?

FINDINGS OF FACT:

Benito Gonzalez III began working for Doherty Staffing Solutions at the Polaris Industries plant on August 15, 2011. He and all other employees were placed on a short-term layoff on October 4, 2011. Doherty's on-site manager, Kim Johnson attempted to contact him to let him know that he should return to work on October 18, 2011. Mr. Gonzalez did not receive the message. He was discharged because he did not report to work on October 18 or 19, 2011.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence establishes that the claimant was discharged for misconduct in connection with the employment. It does not.

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.

Ms. Johnson testified that she did not speak personally with Mr. Gonzalez but merely left a message for him. Employer Exhibit One establishes that she spoke with Mr. Gonzalez on October 19, 2011 and that he stated he had not received the message. Since the evidence does not establish that Mr. Gonzalez knew that he should return to work, his discharge for failing to report is not a disqualifying event.

DECISION:

The unemployment insurance decision dated November 14, 2011, reference 03, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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