

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DEMETRIOS L ELLIOTT
Claimant

APPEAL NO. 14A-UI-08626-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARBOR FREIGHT TOOLS USA INC
Employer

OC: 07/13/14
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 12, 2014, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on September 9, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Tom Moore participated in the hearing on behalf of the employer with a witness, Kyle Montgomery.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked part time for the employer about two days per week from August 2013 to approximately December 20, 2014. He had taken the job after his full-time employment with McDonald's ended. He was receiving unemployment benefits while he was attending school and approved for department training.

The claimant had requested the week of December 21 to be off work to attend a relative's funeral in Des Moines. When he returned to Davenport, he contacted the store to see when he was scheduled to work. The clerk told him that he was not on the schedule. The claimant then talked to the assistant store manager, Tom Moore, who told the claimant that he understood that the claimant had requested two weeks off. The claimant told Moore that was incorrect and asked to be put on the schedule again. The claimant was never put back on the schedule and later got a letter stating that he was terminated for being absent from work without notice.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship

and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant's testimony is more credible than Moore's in terms of memory about what happened back in December 2013. As a result, I concluded that the claimant was not put back on the schedule after taking a week off for the funeral. No willful misconduct has been proven. See 871 IAC 24.32(1) (definition of misconduct).

I will note that even if the claimant quit employment, he would not be disqualified because the job was part-time and he had sufficient wages from his full-time job with McDonald's to qualify for benefits.

DECISION:

The unemployment insurance decision dated August 12, 2014, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/can