

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AUSTIN L NELSON
Claimant

APPEAL NO. 14A-UI-01264-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CONCEPT BUILDERS LTD
Employer

OC: 01/05/14
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 3, 2014, reference 02, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 25, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Brady Steffins participated in the hearing on behalf of the employer with witnesses, Darci Richter and Bill Welter.

ISSUE:

Was the claimant's separation from work a voluntarily quit employment without good cause attributable to the employer or a discharge for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as an iron worker from May 5, 2013, to November 27, 2013. He had requested and received permission to be off work on December 5, 2013, for a court appearance but was scheduled to work December 2 to 4. He was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled and could be terminated after three days of absence without notice to the employer.

On December 2, the claimant talked to the office assistant, Darci Richter, about his paycheck for the previous week because his rate of pay was \$11.50 per week and the paycheck was calculated at \$11 per hour. Richter told him he would have to wait until the end of the week to be reimbursed for the money he was shorted on the paycheck.

The claimant then talked to the foreman, Royce Turner. He told Turner about his check being shorted and said he could not afford going out of town for work with his pay shorted. Turner told him okay but he needed to be at work on December 9.

After his court appearance on December 5, the claimant talked to Richter about whether there was work on Monday. Richter told him that some workers were being laid off and he was going to be laid off because he had missed work December 2 to 4 without calling in. The claimant reasonably believed he was being laid off.

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 the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony that he told Turner that he would not be at work December 2 to 4 due to not being able to afford being out of town with his paycheck being shorted and that Turner told him to make sure and be at work on December 9. I further believe he was told by Richter that he was being laid off due to the three days he was absent. The separation must be treated as a discharge.

The issue then is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Iowa Code § 96.6-2; Cosper v. Iowa Department of Job Service, 321 N.W.2d 6, 11 (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).

Since the claimant told the foreman he was not going to work until he got paid what was owed him and the foreman told him to make sure he was at work on December 9, the claimant cannot be considered a no-call, no-show on December 2 to 4. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated February 3, 2014, reference 02, is affirmed. 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/pjs