

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID A BRINKER

Claimant

APPEAL NO: 11A-UI-15892-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RHEINSCHMIDT TILE & MARBLE INC

Employer

OC: 10/30/11

Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's December 6, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer in March or April 2002. The claimant worked as a tile setter and/or superintendent.

The claimant was supervising a job in Arkansas when the employer asked him to work at a project in Texas for a week. The claimant went to Texas and was working third shift on October 11. He did not get along with one of the superintendents. Instead of working his shift, the claimant believed it was best for him to go back to his motel so he would not get involved in any confrontation with this person. The claimant did not say anything to an owner at the job about going back to the motel because the owner was talking to the person the claimant did not get along with.

Before 8 a.m. on October 12, the claimant received information about the hours employees worked at the Arkansas project. He faxed this information to the employer's controller. He planned to call an owner, Darya, but she called him first. Darya told him that a co-owner did not want the claimant to return to the Texas project after he walked off the job. Since the claimant was only supposed to be in Texas for a week, the claimant asked what this meant. She responded that he was laid off from work until the employer assigned him to another project. Before the Texas incident occurred, the claimant understood he would next work in Connecticut.

On October 24, the claimant met with the owners in Burlington. Even though the claimant believed the meeting was positive, the employer told him they would contact him after talking to the other owners and the Texas employees. The employer did not contact the claimant about another job until January 18. On January 18, the employer told the claimant about an upcoming job in California.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. Even though the claimant left the job site during his third shift on October 11, he did not intend to quit. He left so he did not get into a confrontation with another employee.

When the employer talked to him the morning of October 12, the employer told him he was not to return to the Texas project and was laid off. Since the Texas project was a five-day assignment, the claimant thought the employer would still send him to Connecticut since the Arkansas project he supervised was almost completed.

The employer talked to the claimant in Burlington on October 24. After this meeting, the claimant understood the employer would call when there was another job to assign to him. The employer is in the construction business and the claimant understands there were times the employer did not have much if any work.

The facts establish the claimant became unemployed on October 12. 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 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 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).

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).

The fact the claimant left a job site on October 11 without authorization does not establish that he committed work-connected misconduct. Since he was only to work at the Texas job site for five days and left so he did not get involved in a confrontation with another employee, the facts do not establish that this isolated incident amounts to work-connected misconduct. As of October 30, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's December 6, 2011 determination (reference 01) is reversed. The claimant did not voluntarily quit his employment. Instead, the employer laid him off from work for reasons that do not constitute work-connected misconduct. As of October 30, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs