

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRAIG L PEARSON
Claimant

APPEAL NO. 11A-UI-01435-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PER MAR SECURITY & RESEARCH CORP
Employer

OC: 01/02/11
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated January 28, 2011, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on March 8, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Michael McElmeel participated in the hearing on behalf of the employer with a witness, Nick Weeks.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a security officer from 2005 to December 26, 2010. The claimant was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify their supervisor at least four hours before their shift if they were not able to work as scheduled.

The claimant was scheduled to work on December 24 at 10:00 p.m. The claimant's supervisor called him at about 2:00 p.m. on December 24 asking that he report to work early at 8:00 p.m. He agreed. Later in the afternoon at about 4:50 p.m., the claimant called his supervisor. It was snowing and over eight inches of snow were forecast during the evening. The claimant lives about 30 miles from his jobsite in a rural area. When the claimant told his supervisor that the roads were too bad and he was not able to report to work, the supervisor told him the roads were fine and he had to report to work. The claimant called his supervisor back at about 5:30 p.m., after rechecking weather and road conditions, and said he wouldn't be in to work. The supervisor told him that if he did not report to work, he should turn in his uniform on December 27. The claimant said okay. He never said anything about quitting.

The claimant did not report to work on the evening of December 24 because it was unsafe to drive to work, due to severe weather and bad road conditions.

The claimant reported to work as scheduled on December 26 and worked his shift. He reported to work as scheduled on December 27 but was requested to report to the operating manager. The operation manager laid out what had happened on December 24 and said the employer was

accepting his resignation. When the claimant protested that he had not quit, the operations manager said by saying “fine” when the supervisor told him to turn in his uniform on Monday that meant he quit. The claimant had no prior attendance problems.

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).

When someone says that they are going to absent for work for one day, reports to work on his next two scheduled days of work, and is told by his supervisor that he no longer has a job—it is a discharge, not a quit. The fact that the claimant responded “okay” or “fine” when he was told to turn in his uniform does not mean he intended to quit. He was simply acknowledging what the supervisor said. The real question here is whether the claimant’s absence on December 24 amounts to misconduct.

The issue in this case 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).

A single absence due to severe winter weather conditions and hazardous road conditions does not amount to disqualifying misconduct. While the work rule requires a four-hour notice, the claimant provided reasonable notice under the circumstances. Consequently, no misconduct has been proven.

DECISION:

The unemployment insurance decision dated January 28, 2011, 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/kjw