

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELIAS R QUIROZ
Claimant

PREMIER SERVICES INC
Employer

APPEAL NO: 11A-UI-12869-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/31/10
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated September 20, 2011, reference 04, that held he voluntarily quit without good cause on August 22, 2011, and benefits are denied. A telephone hearing was held on October 24, 2011. The claimant, and his Attorney, Dennis McElwain, participated. Jennifer Short, Manager, participated for the employer. Claimant Exhibits 1 and 2 was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on December 31, 2008, and returned to work on assignment at Tur-Pak as a full-time production employee on November 11, 2010. The claimant is a Spanish speaking person. The claimant notified a Spanish speaking Tur-Pak supervisor that his wife had a medical emergency and he needed to be off work for four days from August 18. When he returned to work on August 23, he was stopped by a Tur-Pak representative stating he had been fired.

The employer is a temporary employment firm. It considered claimant was a voluntary quit for being a no-call/no-show to work on August 19, and 22 in violation of a company policy.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on August 22, 2011.

The claimant put the employer on notice through a Spanish speaking supervisor at Tur-Pak that he needed four days off work due to a family medical emergency. The claimant provided notice that he needed to be off work such that he was not a no-call or no report for work, and he had a justifiable reason for missing work. He employment separation is not a voluntary quit, but a discharge for no disqualifiable reason. He provided documentation to support his testimony that he missed worked for the reason he offered in this hearing.

DECISION:

The department decision dated September 20, 2011, reference 04, is reversed. The claimant was not discharged for misconduct on August 22, 2011. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css