

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL ZELENAK JR
Claimant

APPEAL NO. 09A-UI-01041-B

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEAN SNYDER CONSTRUCTION CO
Employer

OC: 12/14/08 R: 02
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Michael Zelenak Jr. (claimant) appealed an unemployment insurance decision dated January 14, 2009, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from Dean Snyder Construction Company (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Mason City, Iowa on February 13, 2009. The claimant participated in the hearing. The employer participated through Brian Carrott, Human Resources Manager. Employer's Exhibits One and Two were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer discharged the claimant for work-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time construction worker and subsequently a certified welder from October 8, 2007 through December 16, 2008. The employer's travel policy provides that due to the nature of the construction business, employees are required to travel or move to various locations. Employees must travel or move when required to do so and failure to comply with this policy will be considered a voluntary quit. The claimant received the company handbook and signed on October 8, 2007 that he understood the policies contained therein. He indicated on his employment application that he was willing to travel and traveled regularly throughout his employment.

The claimant worked in Boone, Iowa from approximately March 2008 through August 2008. On August 20, 2008 he arbitrarily decided he no longer wanted to travel "outside a reasonable traveling distance" which the claimant determines to be 60 miles. He testified he told this to the human resources manager and Dale Snyder, whom he thought was one of the owners. Subsequently he traveled in Iowa to Charles City, St. Ansgar and Northwood. He also traveled to work in Nebraska for one week in September 2008. The employer directed him to work in

Boone on December 1, 2008 and the claimant said he did not want to go there. The human resources manager was able to find another job for the claimant so he was not required to go to Boone. The employer directed the claimant to work in Boone on December 16, 2008 and did not have any other work available. The claimant refused to go without providing an explanation to the employer and was considered to have voluntarily quit on that date.

The claimant testified during the hearing that he did not want to go to Boone because of a hostile job environment but this was the first time the employer had heard anything like this. The claimant did not make this claim at the time of his separation and did not provide this in the fact-finding as his reason for refusing to go to Boone. He testified he reported a safety violation to the safety company while there and Supervisor Steve Gamelic threatened him with his job, stating that he would do everything he could to remove the claimant from the job. The claimant explained that the hostile work environment resulted from Supervisor Gamelic and the unsafe work environment since he was shocked from a frayed cable when he was there before. However, he subsequently worked in Charles City with Supervisor Gamelic without complaint and did not actually know whether Supervisor Gamelic was at the Boone work site when he refused to go.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant's refusal to travel can be seen as a demonstration of the intent to quit but he denies he quit. Consequently, the claimant's separation will be analyzed as a discharge.

Iowa Code § 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 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 claimant was discharged after he refused to travel when he knew that traveling was part of his job duties. His refusal to travel was an intentional act with knowledge that discharge would result. The claimant's conduct shows a willful or wanton disregard of the standard of behavior the employer has the right to expect from an employee, as well as an intentional and substantial disregard of the employer's interests and of the employee's duties and obligations to the employer. Work-connected misconduct as defined by the unemployment insurance law has been established in this case and benefits are denied.

DECISION:

The unemployment insurance decision dated January 14, 2009, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css