

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRANSISCO J ORIGEL

Claimant

APPEAL NO. 09A-UI-17643-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JOHN MORRELL & COMPANY

Employer

OC: 10/18/09

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 16, 2009 (reference 02) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on January 19, 2010. Claimant participated through interpreter Patricia Vargas and was represented by Andrea Buckley, Attorney at Law. Employer participated through Human Resources Manager Kathy Peterson, Supervisor Mary Jo Yubka, Department Manager Mark Lloyd, and Lead Line Worker John Torres.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer or if he was discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full-time as a first shift forklift operator and was separated from employment on October 19, 2009. On October 17, 2009 he quit by walking off the job at 8:06 a.m. The shift began at 5:30 a.m. and was to end at 11:30 a.m. The policy requires that employees request permission from a supervisor or department manager for partial or whole day absences 48 hours in advance unless it for an emergency reason. Claimant received the policy in the handbook at the time of hire. Claimant asked Torres how many more trucks were coming and Torres told him they were waiting for two more trucks and directed him to help the other employees clean and organize the area while waiting. Claimant walked away and Torres assumed he was looking for a squeegee to help the others. Torres walked outside to talk to a driver and alert him to watch for the other trucks when he saw claimant walking to his car. Torres called his name, walked over to him, and asked what he was doing. He said he had to take his wife to Omaha. Torres asked him if Yubka or Lloyd knew he was leaving and he said they did not. Torres became upset and told him he knew there were two more trucks to unload. Since claimant had already clocked out Torres told him he would need to talk to Yubka and Lloyd on Monday morning. Jose Denado was present to interpret the conversation. Denado did not tell him he could leave without consequence and did not have the

authority to grant claimant permission to leave early. Yubka was not working on Saturday, October 17, 2009 but Lloyd was and claimant did not request permission from him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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.

Claimant's decision to leave well before the shift was over without notice to a lead worker, attempting to leave unnoticed, and his failure to obtain permission from a supervisor or manager when he knew there were more trucks arriving and the shift was not over was deliberate misconduct. Benefits are denied.

DECISION:

The November 16, 2009 (reference 02) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css