

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL L VIBBARD
Claimant

APPEAL NO: 10A-UI-08447-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE FLOOR GUY JANITORIAL INC
Employer

OC: 08/09/09
Claimant: Appellant (4)

Section 96.5-1 – Voluntary Quit
871 IAC 24.25(38) – Discharged Before Effective Resignation Date

STATEMENT OF THE CASE:

The claimant appealed a representative's June 11, 2010 decision (reference 03) that held he was not qualified to receive benefits and the employer's account was exempt from charge because he had voluntarily quit his employment for reasons that do not qualify him to receive benefits. A telephone hearing was held on July 29, 2010. The claimant responded to the hearing notice, but he was not available for the hearing. Patrick Daniels, the owner, participated in the hearing. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer on November 11, 2009. The claimant worked the night shift as a custodial employee. On or about May 10, before the claimant went home, an assistant manager at the store where the claimant worked asked him to sweep and mop a break room or the assistant manager would not sign off on some paperwork. The claimant responded by saying, "Do you need me to wipe your ass too." The assistant manager was offended and reported the claimant's comment.

After Daniels learned about the comment, he called the claimant and talked to him about some problems. Daniels also told him that he needed to apologize to the assistant manager. Daniels planned to give the claimant a written warning for the comment, but not a termination notice. The claimant became upset because he was not going to apologize twice. He then gave Daniels his two weeks' notice. Daniels hung up on the claimant because the claimant was upset and Daniels could not talk to him.

A short time later, Daniels called the claimant back. Daniels then told the claimant that his resignation was effective immediately. The employer decided he could not allow the claimant to work at a location where he was disrespectful to management. The claimant's last day of work was May 10, 2010.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges the claimant for reasons constituting work-connected misconduct. Iowa Code sections 96.5-1, 2-a. Based on the evidence presented during the hearing, the claimant gave the employer his two-week notice on May 10, 2010. When a claimant quits, he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code section 96.6-2.

The law presumes a claimant is not qualified to receive benefits, when he leaves after he receives a reprimand. 871 IAC 24.25(28). Since the claimant quit as of May 24, 2010, he is not qualified to receive benefits as of May 23. He did not establish that he quit for reasons that qualify him to receive benefits.

The law also states that when a claimant gives the employer advance notice of his resignation and the employer discharges him prior to the effective date of the resignation, the claimant is eligible to receive benefits until the date of his resignation. 871 IAC 24.25(38). Although the employer asserted the claimant committed work-connected misconduct, the employer only planned to give the claimant a written discharge. If the claimant had apologized to the assistant manager, his job would not have ended. The employer established business reasons for ending the claimant's employment immediately. The evidence does not establish that the claimant committed work-connected misconduct.

This means the claimant is eligible to receive benefits for the weeks ending May 15 and 22, 2010. As of May 23, the claimant is not qualified to receive benefits because he quit for reasons that do not qualify him to receive benefits.

DECISION:

The representative's June 11, 2010 decision (reference 03) is modified in the claimant's favor. The claimant is eligible to receive benefits for the weeks ending May 15 and 22, but as of May 23, 2010, he is not qualified to receive benefits. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs