

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRINIDAD BAUTISTA**  
Claimant

**APPEAL NO: 14A-UI-09573-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AJS OF DES MOINES INC**  
Employer

**OC: 02/23/14  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's September 12, 2014 (reference 06) determination that disqualified him from receiving benefits and held the employer's account exempt from charge because he had voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated at the October 6 hearing. Randall Roovaart, General Manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits or did the employer discharge him for work-connected misconduct?

**FINDINGS OF FACT:**

The employer hired the claimant on July 1, 2014 to work as-needed as a cleaning technician. The claimant did not have a set schedule.

The employer is in the disaster business and sometimes the employer is very busy and other times the employer does not have much work. If the employer knew the claimant would be needed to work the next day, the employer would contact the claimant and ask him to work the next day.

The last day the claimant worked for the employer was on or about July 18, 2014. On July 18 the employer told the claimant there was no more work for the claimant to do right away but the employer would contact him when the employer again had work for him to do. About three weeks later the claimant received a text form the employer informing him the employer would have work for him in the future. About two weeks later the claimant received a text message from the employer asking the claimant to contact the employer. The claimant received both text messages, but he did not contact the employer.

The claimant established a claim for benefits during the week of February 23, 2014. He reopened this claim during the week of August 3, 2014.

**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 him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The facts do not establish that the claimant quit his instead employment. Instead, the claimant was laid off from work as of July 18 when the employer did not have any work for him to do. The first time the evidence indicates the employer may have contacted the claimant about some potential work was in mid-August. Even though the claimant did not contact the employer in mid-August, his employment separation occurred on July 18 when the employer did not have any immediate work for the claimant to do.

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 propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

In this case, the claimant did not quit and he was not discharged for work-connected misconduct. Instead, he became unemployed when the employer did not have continuing work for him to do after July 18. This was the nature of the employer's business and the employer hired the claimant as an as-needed employee. Based on the reasons for his July 18 unemployed status, the claimant is qualified to receive benefits as of August 3.

The employer is not one of his base-period employers. During the claimant's current benefit year, the employer's account will not be charged.

**DECISION:**

The representative's September 12, 2014 (reference 06) determination is reversed. The claimant did not quit and he was not discharged for work-connected misconduct. The claimant's July 18 employment separation occurred for nondisqualifying reasons. As of August 3, 2014 the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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