

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DILLON M VOGT**  
Claimant

**APPEAL NO. 13A-UI-08580-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GUTTENBERG INDUSTRIES INC**  
Employer

**OC: 06/30/13**  
**Claimant: Appellant (2)**

Section 96.5(2)(a) - Discharge

**STATEMENT OF THE CASE:**

Dillon Vogt filed a timely appeal from the July 18, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 28, 2013. Mr. Vogt did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Tom Ertl represented the employer. Exhibits One and Two were received into evidence.

**ISSUE:**

Whether Mr. Vogt separated from the employment for a reason that disqualifies him for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Dillon Vogt was employed by Guttenberg Industries, Inc., as a full-time machine operator from February 2012 and last performed work for the employer on June 27, 2013. Mr. Vogt's regular work hours were 2:45 p.m. to 11:00 p.m. The employer also regularly assigned overtime work as needed. Mr. Vogt's immediate supervisor was Dennis Fassbinder, Second Shift Supervisor.

On June 27, 2013, Mr. Vogt was assigned to work four hours of overtime. The employer had notified Mr. Vogt of the overtime hours on June 20, 2013. At 11:00 p.m. on June 27, 2013, Mr. Vogt and a coworker left work without approval and without notice to the supervisor, rather than stay and perform the overtime work. On June 28, 2013, Mr. Vogt appeared for work at his usual start time. The coworker did not return. Tom Ertl, Human Resources Manager, noticed Mr. Vogt arriving for work and summoned him to a meeting. Mr. Vogt acknowledged that he had known he was to work a 12-hour shift the day before and admitted to leaving without approval before the end of the 12 hours. Mr. Ertl told Mr. Vogt that he considered his actions to be job abandonment and a voluntary quit. The employer refused to allow Mr. Vogt to return to work.

## REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The weight of the evidence in the record fails to establish a voluntary quit. The evidence indicates that on June 27, 2013, Mr. Vogt worked until his usual quit time, 11:00 p.m., and then left for the day, rather than stay and perform the overtime work. Mr. Vogt returned the next day at his regular start time with the intention of reporting for work, but the employer would not allow him to return to work. The evidence fails to establish an intent on the part of Mr. Vogt to sever the employment relationship. The evidence establishes a discharge based on a single unapproved absence.

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 employer has the burden of proof in a discharge matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

While a disqualifying discharge for attendance usually requires *excessive unexcused* absences, a single unexcused absence may in some instances constitute misconduct in connection with the employment that would disqualify a claimant for benefits. See Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989). In Sallis, the Supreme Court of Iowa set forth factors to be considered in determining whether an employee's single unexcused absence would constitute disqualifying misconduct. The factors include the nature of the employee's work, dishonesty or falsification by the employee in regard to the unexcused absence, and whether the employee made any attempt to notify the employer of their absence.

Continued failure to follow reasonable instructions constitutes misconduct. See Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See Woods v. Iowa Department of Job Service, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The unexcused absence in question involved an isolated refusal to perform *overtime* work, not a refusal to perform work as part of the usual 2:45 p.m. to 11:00 p.m. shift. The departure did not involve any fraud or dishonesty on the part of Mr. Vogt. The departure created an inconvenience in the workplace due to its impact on production. The absence involved a single, isolated refusal to follow the employer's directive to perform overtime work, not a pattern of failing to follow employer directives. The single unexcused absence was insufficient to establish misconduct in connection with the employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Vogt was discharged for no disqualifying reason. Accordingly, Mr. Vogt is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Vogt.

**DECISION:**

The Agency representative's July 18, 2013, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs