

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN M RICE**  
Claimant

**APPEAL NO. 08A-UI-02880-SW**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MANPOWER INC OF DM**  
Employer

**OC: 02/03/08 R: 02  
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated March 13, 2008, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A hearing was held on April 21, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Sara Dahm participated in the hearing on behalf of the employer.

**ISSUE:**

Did the claimant voluntarily quit employment without good cause attributable to the employer?

**FINDINGS OF FACT:**

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked full time for the employer from August 2, 2004, to January 25, 2008. His last assignment was working as a mail courier at Principal Financial Group.

The employer removed the claimant from the assignment after he was arrested and jailed for alleged assault on January 26, 2008. The claimant had intervened in a fight in the hallway between an adult son and mother who lived in the same apartment house. He intervened to prevent the son from injuring his mother. The son had the mother down on the ground, and the claimant pulled the son off his mother. The son was not injured, but charges were filled against the claimant. The claimant had a friend notify the employer that he was in jail.

The claimant contacted the employer as soon as he was released from jail, but was informed that he had been removed from the assignment at Principal. The employer did not have any immediate work available for the claimant, and the claimant remained available for future assignments.

**REASONING AND CONCLUSIONS OF LAW:**

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for

work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992). The claimant did not intend to quit employment when he went to jail. He had a friend notify the employer about what had happened and reported to work after he was released from jail. The separation from employment should be treated as a discharge based on the employer removing him from his assignment.

The division has interpreted misconduct as follows in 871 IAC 24.32(1):

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979).

No willful and substantial misconduct has been proven in this case. The claimant came to his neighbor's aid and did not do anything deliberately to jeopardize his employment.

**DECISION:**

The unemployment insurance decision dated March 13, 2008, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs