

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARNOLD D BARTH
Claimant

K & W ELECTRIC INC
Employer

APPEAL NO: 09A-UI-19353-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/29/09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated December 18, 2009, reference 01, that held he voluntarily quit work without good cause on November 9, 2009, and benefits are denied. A telephone hearing was held on February 25, 2010. The claimant participated. Kris Knapp, Office Manager, participated for the employer. Employer Exhibit One was received as evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment as a full-time installer/laborer mixer on October 6, 2008, and last worked for the employer on Sunday, November 8 about 5:00 p.m. The claimant received an employee handbook that contained the policies of the employer that included a provision for taking time off from work. At the time of hire, the claimant advised the employer he was a farmer, and he would need to take time off in the spring and fall for that work.

The claimant last worked on a Sioux City job site on Sunday, November 8th. Prior to leaving work, the claimant advised his site supervisor that he needed to take time off the next week to farm (harvest). His supervisor told him to get the harvest work done and return when he completed it. Claimant called Branch Manager Steinkamp on Monday and left him a voice mail message that he was staying home to harvest his crops that week, and he had a doctor's appointment on Wednesday. An employer representative responded to it with a voice mail message demanding that the claimant report for work immediately, but the claimant did not receive it until about 5:00 p.m. that was after he began the harvest.

The claimant did not respond to the message, and he did not communicate with the employer until he completed his harvest on Friday and called his supervisor about work. The claimant

was directed to report to Steinkamp on Monday, and when he did so, he was terminated for an unapproved leave pursuant to employer policy. Office Manager Knapp prepared a termination form for the employer file dated November 16, 2009.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on November 16, 2009, for an unapproved leave.

The claimant was told at his time of hire he would be granted time off to farm. The claimant was given permission from his site supervisor to take time off to farm for the week November 9 to November 13, and he notified the branch manager. It was not until after claimant started his harvest that the employer demanded he report to work. The claimant had a good cause for refusal (until the harvest was complete), and the employer's decision to terminate is not for misconduct. The employer leave policy is not controlling, as the claimant had supervisory permission with notice to the employer. The employer did not offer its site supervisor as a witness to refute the claimant's testimony.

DECISION:

The department decision dated December 18, 2009, reference 01, is reversed. The claimant was not discharged for misconduct on November 16, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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