

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN R PLASTER
Claimant

APPEAL NO: 13A-UI-08173-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RAAJ CORPORATION / RAMADA INN
Employer

OC: 06/09/13

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Kevin R. Plaster (claimant) appealed a representative's July 2, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment with Raaj Corporation / Ramada Inn (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 24, 2013. The claimant participated in the hearing. The employer's representative received the hearing notice and responded by sending a statement to the Appeals Section indicating that the employer was not going to comply with pending discovery on the part of the claimant and was not going to participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

OUTCOME:

Reversed. Benefits allowed.

FINDINGS OF FACT:

The claimant started working for the employer in about May of 2012. He had worked full time as a maintenance technician through about February 2013; on or about March 1 the employer changed his hours so that he was working only about 32 hours per week, normally Tuesday through Friday. His last day of work was May 26, 2013.

The claimant had been making various reports of concerns to the employer, particularly since about March 1, 2013. In about March 2013 he had indicated to his manager that he was considering quitting because of a concern about black mold in the pool area, but he never stated that he in fact was going to quit.

The weekend of Memorial Day the claimant worked on Sunday, May 26 and observed that the pump on the spa appeared to be deteriorating to the point where he was concerned it was going to “blow.” He reported this about twice that day to the manager on duty, but was concerned that the employer did not appear to be taking any action. He was not scheduled for work Monday, May 27, but called the technician several times that day to discuss the concern about the pump. At about noon that day he called the manager on duty, who was the executive housekeeper, intending to further express concern about the spa pump. The manager told the claimant that he was not to report back to work, that the employer “no longer needs [your] services.” The claimant understood from this that he was discharged. He assumed that the reason he was discharged was the concerns that he had been reporting to the employer, as well as the employer’s failure to pass a corporate inspection back in April for which he felt the employer held him at least partially responsible.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant’s employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for effectively discharging the claimant is his reporting of problems and his one-time threat to quit. Telling an employer that one is considering quitting or might have to quit is not the same as actually quitting. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant’s actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's July 2, 2013 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs