

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN TOSONE**  
Claimant

**APPEAL NO: 14A-UI-09760-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PER MAR SECURITY & RESEARCH CORP**  
Employer

**OC: 08/17/14**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the September 11, 2014, reference 01, decision that denied benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 8, 2014. The claimant participated in the hearing. Gretchen Goettig, Human Resources/Payroll, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time security officer for Per Mar Security & Research from November 13, 2013 to August 8, 2014. He voluntarily quit his job by walking off his assignment August 7, 2014.

The claimant was assigned to work at Palmer College Homecoming festivities Thursday, August 7, 2014 through Sunday, August 10, 2014. At 8:00 a.m. August 7, 2014, the claimant's supervisor arrived and made assignments to the security officers. The claimant was assigned to stand guard by one of the exterior doors to the gymnasium. At 8:15 a.m. the claimant called dispatch and stated he could not do the assignment because he would have to stand and asked her to find a replacement. The claimant did not have a doctor's note indicating he could not stand but his branch manager tried to place him in assignments where he was allowed to sit down because he said his back bothered him if he could not sit. The dispatcher told the claimant she would see what she could do about finding a replacement.

At 10:15 a.m. the site supervisor went by the area the claimant was working and had him, and all other Per Mar employees at the site, sign a document stating it was a standing job only. The claimant had found a chair and sat as much as he could until the event organizer complained and the employer removed the claimant's chair. The claimant asked for a break and the supervisor said someone would be by to relieve him soon. At 11:00 a.m. the claimant was

relieved for a break. The claimant went out and sat in his car, took some Excedrin for his back pain, and decided he could not "stand the pain" so he called the dispatcher and stated he was going home. He did not walk back inside or call to notify the site supervisor or anyone else on-site that he was leaving. The claimant was scheduled to work Friday, August 8, and the remainder of the weekend on the same assignment. He did not call back to see if dispatch found a replacement for him and he did not report for work or call the employer to state he would not be at work August 8 through 10, 2014.

The claimant called the employer Monday or Tuesday, August 11 or 12, 2014, to get his schedule but was told he was not scheduled that week. That has happened in the past so he was not overly concerned about not being scheduled. He called the employer August 18, 2014, to find out when he was scheduled and was told he needed to speak to the branch manager. He left a message but when he did not receive a return call he filed for unemployment insurance benefits effective the week of August 17, 2014.

Under the employer's policies, an employee who wants to leave his post must notify the dispatch center before he leaves. The dispatcher does not have the authority to allow or deny an employee's decision to leave his post but simply tries to find a replacement worker. An employee is not supposed to leave his post prior to the arrival of proper relief. If an employee walks off his post without proper relief it results in a determination the employee voluntarily quit his job or termination of employment.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant maintains he did not voluntarily quit his job when he walked off the job August 7, 2014, but that his employment was terminated. This case could be analyzed either way but the outcome would be the same. Because the claimant indicates he did not intend to voluntarily quit, and an intention to quit is required, in making a determination of voluntary leaving, this situation will be treated as a termination of employment.

The claimant was assigned to work four days at the Palmer College Homecoming. He reported for duty August 7, 2014, but left when relieved for his first break because his back was bothering him and he did not want to stand during his entire assignment. He told the dispatcher he could not continue because his back hurt and while she stated she would try to find a replacement worker for him, she did not have the authority to allow or deny his request to leave. The claimant proceeded to leave at that point, before a replacement had been found for his post, and without notifying anyone on site he was leaving. He did not wait to see if dispatch found a replacement or wait at his post until relief arrived. Additionally, he did not check in to see if a replacement had been found for the remaining three days of his assignment or whether he needed to report for work those last three days.

The claimant complained about having a bad back but did not have a note from his doctor stating he could not stand. While he may have had an agreement with his branch manager who tried to assign him to sitting jobs, because he did not have a doctor's note excusing him from standing the employer could assign him where needed, regardless of whether he had to stand during the assignment. The claimant also signed an agreement stating it was a standing only job before he left his post and did not return.

Under these circumstances, the administrative law judge concludes the claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Therefore, benefits are denied.

**DECISION:**

The September 11, 2014, reference 01, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs