

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time production worker from June 27, 2005 through September 7, 2005. He voluntarily quit his position due to detrimental and intolerable working conditions. The claimant's direct supervisor, Tim, did not appear to like the claimant and frequently told the claimant he was not any good. The supervisor was always angry with the claimant and verbally offended him in front of his co-workers. The claimant tried to talk to his supervisor but it made no difference so he eventually went to the office to complain about the situation. The office staff was very helpful and stated they would talk to the supervisor. Following that meeting however, the supervisor's treatment of him declined further. The supervisor now started making hand gestures and told the claimant he did not want him working there. He called the claimant "dumb" and "stupid."

The claimant was given a different job that required him to "make the hole bigger on the neck of the pig." He worked next to a container of water that was heated to approximately 180 degrees. On August 16, 2005, the water was plugged up and the claimant told the supervisor, who came over to fix it. The supervisor did not shut off the valve and put a yellow hose into the water, causing hot water to splash on the claimant's face. The water burned the claimant and he was hoping the supervisor would send him to the nurse but that did not happen. He did not want to report it because he did not want the situation to get any worse. Another incident occurred on August 26, 2005, when a machine was not working properly. The machine has a very sharp blade and it was shaking so much that it was hurting the claimant's arm. The claimant reported it to Tim who told him it was okay and to keep working. After approximately three minutes, the machine broke apart and hit him. Some other parts fell to the floor and Tim came up and started yelling at the claimant, telling him he was stupid. Tim told the claimant they did not want him there and he should leave. The claimant asked why they did not go to the office but Tim continued yelling at him. The claimant then went to the office where he eventually met with someone from personnel, a union representative and his supervisor. The union representative became angry with the claimant's supervisor but the specific outcome of that meeting is not known.

The final incident prompting the discharge occurred on September 6, 2005 when Tim again burned the claimant with hot water. Tim asked the claimant if he was okay but he was laughing at the same time. The claimant did not respond, as he was afraid something else would happen. When he went home that night after work, his wife saw his injuries and they both decided the claimant could no longer work in that environment. He quit the following day.

REASONING AND CONCLUSIONS OF LAW:

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

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.

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, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

The law presumes a claimant has left employment with good cause when he quits because of intolerable or detrimental working conditions. 871 IAC 24.26(4). In order to show good cause for leaving employment based on intolerable or detrimental working conditions, an employee is required to take the reasonable step of informing the employer about the conditions the employee believes are intolerable or detrimental and that he intends to quit unless the conditions are corrected. The employer must be allowed the chance to correct those conditions before the employee takes the drastic step of quitting employment.

The claimant reported his supervisor's conduct to the employer on at least three different occasions but the mistreatment did not stop. The employer witness had no firsthand knowledge of the situation but contends the claimant did not talk to anyone about the problem because there were no notes in his record. The claimant's former supervisor no longer works for the company. The claimant's testimony is found credible and the Administrative Law Judge

concludes he took reasonable steps to resolve the problem before he quit. Inasmuch as the claimant did give the employer an opportunity to resolve his complaints prior to leaving employment and the problems actually worsened after these reports, the separation was with good cause attributable to the employer. Benefits are allowed.

DECISION:

The unemployment insurance decision dated September 29, 2005, reference 01, is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

sdb/s