

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MITCHELL H BRUNNER
Claimant

APPEAL NO. 13A-UI-02768-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NELLIS MANAGEMENT COMPANY
Employer

OC: 09/30/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 1, 2013, reference 06, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on April 8, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Melissa Newman participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer as a cook from October 11, 2012, to January 13, 2013. Melissa Newman was the acting manager when his employment ended. Lucy Phelps was the crew chief.

After reporting to work on January 13, the claimant became ill. He informed Phelps who initially told him that if he needed to leave to go ahead but later said he would need to talk to Newman first. When the claimant spoke to Newman on the phone, she told him that he needed to stay since he was the only cook scheduled. When the claimant insisted he was sick, Newman told him that if he left, he might as well turn in his uniform. The claimant had to leave because he was ill, and he reasonably believed he was discharged.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim, which was filed effective September 30, 2012.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and

reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony about what Newman told him on January 13 and find that he reasonably believed he was discharged.

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

No willful and substantial misconduct has been proven in this case. The claimant left work because he was sick. Presumably the employer would want a cook who is sick and vomiting to leave work.

DECISION:

The unemployment insurance decision dated March 1, 2013, reference 06, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/tll