

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN S MARTZ
Claimant

APPEAL NO: 08A-UI-07689-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOWEN MILLWRIGHT INC
Employer

**OC: 08/03/08 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

Bowen Millwright, Inc. (employer) appealed a representative's August 22, 2008 decision (reference 01) that concluded Shawn S. Martz (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 9, 2008. The claimant participated in the hearing. Steve Bowen appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on February 18, 2008. He worked full time as a service and lube worker in the employer's industrial equipment (primarily conveyer) repair business, usually working Monday through Friday. His last day of work was May 22, 2008.

The claimant's regular routine for work would be that either the day before or the morning of a work day the business owner, Mr. Bowen, would either tell the claimant or call the claimant and tell him where they would be going for work and what time to meet at a predesignated place in Osceola. After the end of work on May 22, Mr. Bowen dropped the claimant off at his vehicle in Osceola and indicated that he had some other things he needed to do the next day, May 23, so he would call the claimant and arrange to get him his paycheck. The claimant simply shrugged and went to his vehicle. Mr. Bowen did not call the claimant on May 23.

May 26 was the Memorial Day holiday. On May 27 the claimant had not heard from Mr. Bowen about meeting for work, so he later called Mr. Bowen to ask what was happening. Mr. Bowen responded that he was in Coralville, Iowa, so if the claimant wanted his paycheck, he would have to get it from Mr. Bowen's wife, but that he would have to wait until Friday, May 30, to pick

up his last paycheck. The claimant then arranged to pick up his one paycheck from Mr. Bowen's wife. On May 30 he went to Mr. Bowen's shop and picked up his final paycheck. Mr. Bowen told the claimant then that his continued employment was "not going to work out."

REASONING AND CONCLUSIONS OF LAW:

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that he quit because he did not pursue contacting the employer about a paycheck on May 23 and did not pursue the employer about continuing to report to work. The normal work pattern for this employment was that the employer initiated the contacts as far as the upcoming work schedule. The claimant's attempts at contact were rebuffed. Given the conduct and statements of the employer, the claimant reasonably concluded that he had been discharged from his employment. The administrative law judge concludes that under the facts of this case the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but 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 decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). 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).

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 the employer effectively discharged the claimant was that he lacked the skills and demeanor desired by the employer. 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 August 22, 2008 decision (reference 01) is affirmed. The claimant did not voluntarily quit and 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