

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEONARD M NORDYKE
Claimant

APPEAL NO: 11A-UI-14492-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MCDONALDS
Employer

**OC: 10/09/11
Claimant: Appellant (5)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's October 25, 2011 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant responded to the hearing notice, but was not available for the hearing. The claimant did not participate in the hearing. Jeromie Hinote, the store manager, appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge finds the claimant is not qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked about a year for the employer as a crew person. During his employment, the employer gave him warnings for failing to work his shifts as scheduled.

In late August or early September 2011, the employer gave the claimant a final written warning for leaving work early. He received this warning when he thought his shift ended at 2 p.m., when it actually ended at 3 p.m. On that day, the claimant went on a break at 1:30 p.m. and did not return to work. After the claimant received the written warning, he understood his job was in jeopardy if he again did not work as scheduled without proper notice.

On October 7, the claimant did not report to work. He called the employer to report he was unable to work, but no one answered the phone. The claimant received notice he had to talk to Hinote before he could return to work. Hinote did not work on October 7, but did the next day.

On October 8, the claimant was waiting for Hinote when he came to work at 5 a.m. Hinote believed the claimant called the store the day before and no one answered the phone when he called. Hinote told the claimant to punch in as scheduled on October 8.

The claimant was not scheduled to work until 7 a.m. He sat in the break room until it was time for him to work. Hinote talked to him a couple of more times between 5 and 7 a.m. At 7 a.m., the claimant did not punch in and he was not at work. The claimant did not work on October 8.

On October 10 or 11, the claimant went to the store and asked Hinote if he still had a job. The claimant explained he left work on October 8 after employees told him Hinote was going to discharge him. Since Hinote personally talked to the claimant three times between 5 and 7 a.m. and said nothing about discharging the claimant, the employer did not understand why the claimant left without again talking to Hinote. The employer discharged the claimant for leaving work or walking out on October 8 without authorization after he had already received a final warning for failing to work as scheduled.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharged the claimant for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The facts do not establish that the claimant quit. If he had quit, it is unlikely that he would have talked to Hinote on October 10 or 11.

The claimant knew or should have known his job was in jeopardy on Saturday, October 8, when he had to talk to Hinote before he could work. Since Hinote told the claimant to punch in when he was scheduled to work after the claimant talked to him, the claimant's failure to stay and work on October 8 when his job was already in jeopardy amounts to an intentional and substantial disregard of the employer's interests. The claimant committed work-connected misconduct. As of October 9, 2011, the claimant is not qualified to receive benefits

DECISION:

The representative's October 25, 2011 determination (reference 01) is modified, but the modification has no legal consequence. The claimant did not voluntarily quit. Instead, the employer discharged the claimant after he again failed to work as scheduled. The employer discharged the claimant for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of October 9, 2011. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw