

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ESEF SPIJODIC**  
Claimant

**APPEAL NO: 08A-UI-11345-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MANPOWER INC OF DES MOINES**  
Employer

**OC: 10/26/08 R: 02**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

Manpower Inc. of Des Moines (employer) appealed a representative's November 24, 2008 decision (reference 01) that concluded Esef Spijodic (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 December 17, 2008. The claimant participated in the hearing. Sara Dahm appeared on the employer's behalf. Samir Dzaferagic served as interpreter. 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 employer is a temporary employment firm. The claimant's first and only assignment with the employer began on November 26, 2001. He worked full time as a mail specialist in the employer's business client's Urbandale, Iowa mail sorting facility. His last day on the assignment was October 30, 2008.

The claimant had been having some difficulties with several coworkers, in part because he felt he was being blamed for mistakes made by other employees, and in part because some coworkers repeatedly tried to take away work projects he was working on before he had finished with the work. He had complained to the business client's manager about these problems earlier in October 2008.

On the morning of October 30 at approximately 9:30 a.m. one of the coworkers came and tried to take away a project the claimant had been working on but which he had not finished. He became upset and some words were exchanged with the coworker. In order to calm down, the claimant stepped outside the building to smoke a cigarette. He also called his son, who spoke

English, whereas the claimant did not speak it well, and asked his son to call the business client's supervisor to relay the claimant's concern about the incident with the coworker. When the son called the business client's supervisor a few minutes later, the supervisor told the son to tell the claimant that he no longer had a job at the facility. Shortly thereafter the business client contacted the employer to explain that it considered the claimant to have quit because of his leaving his work station, and regardless as to whether the claimant had intended on returning, it did not wish the claimant to return because of how he handled the situation that morning.

### **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 by walking off the job. It is clear that the claimant did not intend to quit his employment when he stepped outside to calm down and clear his head, and minutes later attempted to communicate with the supervisor to explain what had happened. The administrative law judge concludes that 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 his leaving his workstation after the dispute with the coworker. The employer has not established that this conduct was substantial misbehavior, as compared to inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, or a good faith error in judgment or discretion. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). 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 November 24, 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.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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