

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DIDIER D SELEMANI

Claimant

APPEAL NO. 11A-UI-11813-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

NETWORK IMAGINING SOLUTIONS INC

Employer

OC:12/19/10

Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated August 30, 2011, reference 01, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 29, 2011. Claimant participated. Employer participated by Crystal Butler, human resources generalist. The record consists of the testimony of Crystal Butler and the testimony of Didier Selemani. Julius Njoroge served as Swahili interpreter.

ISSUE:

Whether the claimant was separated from his employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer assembles light components for Whirlpool. The claimant was hired as a full-time assembler on January 1, 2011. The claimant's last day of work was July 22, 2011.

On July 22, 2011, the claimant and his work group finished their assignment early. The normal quitting time was 3:30 p.m. The claimant clocked out at 1:25 p.m. He thought he had been given permission to leave early by his supervisor. The claimant returned to work on July 25, 2011. He was informed at that time that he was considered to have voluntarily quit because he abandoned his job on July 22, 2011, by leaving early.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

Iowa Code § 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be

based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that leads to termination is not necessarily misconduct that disqualifies an individual from receiving unemployment insurance benefits. Misconduct occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. The employer has the burden of proof to show misconduct.

There is insufficient evidence in this record to show that the claimant intended to abandon his job when he left early on July 22, 2011. The claimant testified that he and his fellow workers had been given permission to leave because the work assignment had been completed early. Although the employer read a statement from the claimant's former supervisor that the claimant had not been given permission to leave, that statement is hearsay. The employer's representative did not have firsthand knowledge of the events of July 22, 2011. The administrative law judge had no opportunity to weigh the credibility of the claimant's testimony against the testimony of the claimant's former supervisor. The administrative law judge accepts the claimant's testimony that he left because he thought he had been given permission to leave.

The claimant had never been disciplined prior to July 22, 2011, for leaving the workplace nor did he have any violations of the employer's attendance policy. What appears to have occurred is a miscommunication between the claimant and his supervisor. The claimant clearly did not intend to quit his job nor is there evidence of misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated August 30, 2011, reference 01, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs