

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KEVIN J KVIDAHL
Claimant

APPEAL NO. 13A-UI-01872-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CEI EQUIPMENT CO INC
Employer

OC: 01/13/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 6, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on March 14, 2013. The claimant did participate. The employer did participate through (representative) Kim Hurbert, Human Resources Manager and Randy Barnes, Production Manager.

ISSUE:

Was the claimant discharged due to job-connected misconduct or did he voluntarily quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a welder in the augur department full time beginning August 23, 2010 through January 11, 2013 when he voluntary quit.

On January 11, the claimant was engaged in horseplay with another employee that quickly got out of hand. The claimant was full participant in the horseplay. There were at least three supervisors available on the floor of the plant as well as the plant manager. The claimant did not try to contact any of them before he became angry and walked off the job without permission or even notification to any supervisor. The other employee involved in the horseplay was discharged. The claimant later called back into the employer to talk to his supervisor who was in a meeting. The claimant later alleged that he was in fear for his life, yet he never contacted any management for assistance. The claimant had an opportunity to seek help but did not take it because he was angry and just walked out. The claimant had two prior warnings for engaging in horseplay and knew or should have known that he was not allowed to engage in horseplay and what to do if another employee tried to engage him in horseplay.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer.

Iowa Code section 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.

871 IAC 24.25(6) provides:

Voluntary quit without good cause. 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. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(6) The claimant left as a result of an inability to work with other employees.

The claimant knew he was not to engage in horseplay as he had two prior warnings for the same behavior. The employee who was participating in the horseplay did not try to chase the claimant out of the plant or pursue him when the claimant left the work area, punched out and left the plant. The claimant knew or should have known from his two prior warnings how to handle the situation. He sought no help from any supervisor and at least three were available for him. The claimant is simply alleging that he feared for his life as an excuse to justify leaving the plant without notification or permission. Even if this case were to be considered a discharge, the employer's evidence establishes that the claimant had prior warning for horseplay and knew or should have known that it was not allowed. The claimant's walking out of the plant after voluntarily engaging in his third instance of horseplay is not a good cause reason attributable to the employer for leaving the employment. Benefits must be denied.

DECISION:

The February 6, 2013 (reference 01) decision is affirmed. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/tll