

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FRANK W FEESE

Claimant

APPEAL NO: 10A-UI-06139-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VERSCHOOR MEATS INC

Employer

OC: 03/21/10

Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Verschoor Meats, Inc. (employer) appealed a representative's April 15, 2010 decision (reference 01) that concluded Frank W. Feese (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 June 10, 2010. The claimant participated in the hearing and was represented by Dennis McElwain, attorney at law. Randy Hanson appeared on the employer's behalf and presented testimony from two other witnesses, Kelly Hanson and Shawn Egdorf. During the hearing, Employer's Exhibit One was entered into evidence. 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 December 10, 2007. He worked full time as a production worker in the employer's meat processing plant. His last day of work was March 26, 2009.

The claimant had previously had some work-related injuries. He had returned to work, and then had a re-injury. As a result, the employer did not want the claimant to perform certain duties. On March 23, 2009 the employer required the claimant to sign a statement that he agreed to "only do hearts and not carry any tubs no exceptions until [okayed] by Randy Hanson only in writing. . . Not following these procedures I will resign no questions asked." It was not established what if any medical restrictions imposed on the claimant by any medical practitioner were in effect as of March 26, 2009.

On March 26 the claimant was pushing meat toward a saw, another light duty position he had been sometimes allowed to do. He had also been cleaning trolleys, another light duty position

he had sometimes been allowed to do. The line was getting behind, and so out of habit he started to try to move some of the tubs he was not to be moving. He was seen starting to do this and was reminded that he had signed a paper that he would not do that, so he stopped. Randy Hanson, the plant manager and owner, was informed that the claimant had started to try to move some of the tubs. Mr. Hanson then confronted the claimant and told him that he should leave. After some further discussion about the fact that the claimant had agreed to quit if he carried any of the tubs and that Mr. Hanson wanted him to leave and quit as he had agreed to do, the claimant left.

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. A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c).

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 violated the terms of the agreement not to perform certain work. While the claimant may have made the decision to attempt to do certain work he should not have done, which could be misconduct and could result in disciplinary action, this was not a decision to quit – it was the employer's choice to enforce the agreement and force the claimant to leave. At that point, the claimant did not have any choice as to whether to stay and remain in the employment. 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 attempting to perform work the employer did not wish him to do to avoid the potential of further injury. Under the circumstances of this case, the claimant's actions on March 26, 2009 were the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, or was a good faith error in judgment or discretion. 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 April 15, 2010 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