IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

JAMES F CASE
Claimant

BAUER BUILT MANUFACTURING INC
Employer

APPEAL NO. 12A-UI-03718-HT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/12/12
Claimant: Appellant (2)

Section 96.5(1) – Quit
Section 96.5(2)a - Discharge

STATEMENT OF THE CASE:

The claimant, James Case, filed an appeal from a decision dated March 30, 2012, reference 02. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on May 14, 2012. The claimant participated on his own behalf with Sally Hoyle and was represented by Mark Rasmussen. The employer, Bauer Built Manufacturing, Inc. (Bauer), participated by Operations Manager Joe Bindner and was represented by David Morain.

ISSUE:

The issue is whether the claimant quit work with good cause attributable to the employer or was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

James Case was employed by Bauer from June 25, 2011 until February 8, 2012 as a full-time assembler. He injured his back at work on Thursday, February 2, 2012, and was sent to a chiropractor. The next day, he was riding to work with his supervisor, Jeremy Hoover, and said he was to go back to the chiropractor that afternoon and might not come back to work afterward. Mr. Hoover said he understood. After the appointment, the claimant went to where Mr. Hoover was working and confirmed he would not return to work that day.

Later that evening at a local bar, Operations Manager Joe Bindner and Mr. Case had a confrontation about why the claimant had not returned to work after his appointment that day when he had returned to work after his appointment the day before. Vulgar words and shouting ensued. The claimant left then returned to the bar. Other employees, including the owner's son, were involved one way or the other and eventually Mr. Case left declaring he had "had enough of this shit."

He went back to the chiropractor on February 7, 2012, and received a note excusing him from work February 3, 4, 5, 6, and 7, 2012. He returned to work February 8, 2012, and, along with Mr. Hoover, went to talk to Mr. Bindner. The employer said he was considered to have been a

voluntary quit when he left the bar Friday night stating he “had enough of this shit.” When the claimant stated he had never intended to quit, just to leave the bar, the operations manager said he was then fired and would let him know in writing later, though he never did.

REASONING AND CONCLUSIONS OF LAW:

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.

There is no indication the claimant intended to quit. A voluntary quit requires an intention to quit accompanied by an overt act carrying out that intent. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant only left a bar making a general statement; he did not leave work, did not address the comment to his supervisor, and did not abandon his job. There is nothing to support any finding of a voluntary quit.

Iowa Code section 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.

The record does establish a discharge of the claimant by the employer. Both the claimant and the employer agree that raised voices and impolite remarks were exchanged at the bar on

Friday night between Mr. Case and other employees of Bauer. There has been nothing established regarding any physical threats or any blows being struck or any illegal activities. As far as off-duty conduct being reason for discharge, *Kleidosty v. EAB*, 482 N.W.2d 416 (Iowa 1992) requires there to be "illegal or immoral conduct" in violation of a specific work rule. Men arguing in a bar do not constitute either illegal or immoral conduct.

The employer has failed to establish the claimant was guilty of substantial, job-related misconduct. Disqualification may not be imposed.

DECISION:

The representative's decision of March 30, 2012, reference 02, is reversed. James Case is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeyer
Administrative Law Judge

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Decision Dated and Mailed

bgh/kjw