

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAYMUNDO PEREZ RAMOS
Claimant

APPEAL NO: 14A-UI-11323-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DORMARK CONSTRUCTION CO
Employer

OC: 11/24/13
Claimant: Appellant (5)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's October 31, 2014 determination (reference 02) that disqualified him from receiving benefits and held the employer's account exempt from charge because he voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated at the November 20 hearing. Oscar Amaya, the construction supervisor, appeared on the employer's behalf. Ike Rocha interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in October 2013. The claimant worked full time. During his employment, there were times the claimant was absent from work, but the employer learned the claimant had a reasonable explanation when he was not at work prior to October 12, 2014. The claimant's job was not in jeopardy before October 12, 2014.

In early October 2014, Amaya told employees, including the claimant that for the next four or five Sundays everyone would be required to work to get jobs completed. No one voiced any complaints or concerns when Amaya made the announcement about working Sundays.

The claimant worked as scheduled on October 11. He did not contact Amaya to request time off on October 12. The claimant was scheduled to work at 7 a.m. on October 12. When the claimant did not call or report to work, Amaya called him around 10 a.m. Amaya talked to the claimant and told the claimant to report to work as soon as possible and if he did not, his job was in jeopardy. The claimant indicated he would report to work, but did not.

The claimant did not report to work on October 12 because he had laundry to do, grocery shopping to do for the next week and personal errands to do. The claimant was also tired. The claimant did not contact Amaya later on October 12 to report that he would not be able to work.

When the claimant reported to work on October 13, he learned he was discharged because he had not reported to work the day before. Amaya discharged the claimant because he needs reliable employees. The claimant did not contact the employer later on October 12 to report he would not be at work after he said he would work. The claimant did not give the employer any reason for not reporting to work. Also, since Amaya was flexible when the claimant needed time off before, he thought the claimant should be willing to work a few Sundays when needed to get work done.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The facts do not establish that the claimant quit. Instead, the employer made the decision to end the employment relationship when the claimant did not call or report to work on October 12, 2014.

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's failure to contact the employer before 10 a.m. on October 12 and then to tell the employer he would report to work that day and did not, amounts to an intentional disregard of the standard of behavior the employer has a right to expect from an employee. The employer discharged the claimant for work-connected misconduct. As of October 12, 2014, the claimant is not qualified to receive benefits.

DECISION:

The representative's October 31, 2014 determination (reference 02) is modified but the modification has no legal consequence. The claimant did not voluntarily quit this employment.

Instead, the employer discharged him for work-connected misconduct. As of October 12, 2014, the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs