

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROGER L BROWN
Claimant

APPEAL NO. 09A-UI-18707-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLYING J INC
Employer

**OC: 11/15/09
Claimant: Respondent (5)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated December 7, 2009, reference 01, that concluded the claimant voluntarily quit employment with good cause attributable to the employer. A telephone hearing was held on January 26, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Steven Elmer participated in the hearing on behalf of the employer with a witness, Phil Rowland.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked full time for the employer as a maintenance worker from November 2008 to March 10, 2009.

The employer has a monthly store operations meeting for staff. There is one meeting in the morning and one in the afternoon. The claimant was scheduled to work on the afternoon of March 10. He was unaware of the store operation meetings that day. When he reported to work, Phyllis Jenkins, questioned why he missed the morning meeting. The claimant told her he did not know about the meeting.

Jenkins told the claimant that he did not need to go to the afternoon meeting and instead she wanted him to clean the showers. Generally, employees were to attend the meeting when they were working, but the claimant thought Jenkins was not allowing him to attend the afternoon meeting as punishment for missing the morning meeting when he was never notified about the meeting. He complained to another supervisor, Paul Vandersee, that he thought it was unfair that he was not allowed to go to the staff meeting and told Vandersee that he was leaving work until he could get this complaint resolved. The claimant did not intend to quit his job when he left work that afternoon.

A meeting was then scheduled with management by telephone. During the meeting, Jenkins informed him that the employer considered him to have abandoned his job during the middle of his shift and his employment was terminated.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992). The preponderance of the evidence establishes the claimant did not intend to permanently leave his employment when he left the truck stop on March 10. The separation must be treated as a discharge.

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

I am convinced that the claimant believed Jenkins was not allowing him to attend the afternoon staff meeting as punishment for missing a morning meeting that the claimant had no knowledge of. I do not believe this was really what Jenkins was doing, but I can understand how the claimant misunderstood this. At most, the claimant made a good faith error in judgment insisting on a meeting and leaving work before the end of his shift. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated December 7, 2009, reference 01, is modified with no change in the outcome. The claimant was discharged but not for work-connected misconduct. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css