

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT MUELLER
Claimant

APPEAL NO: 13A-UI-02202-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

POTTER MANURE PUMPING INC
Employer

OC: 01/08/12
Claimant: Appellant (2)

Section 96.5(3)a – Work Refusal
Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 11, 2013, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 21, 2013. The claimant participated in the hearing. Rodney Potter, President/Owner, participated in the hearing on behalf of the employer. After it became clear there had been an offer of work after the claimant's separation the parties waived their right to notice on the offer of work issue.

ISSUES:

The issues are whether the claimant was discharged for misconduct October 10, 2012, and whether he refused a suitable offer of work October 18, 2012.

FINDINGS OF FACT:

The claimant was employed as a full-time hired hand for Potter Manure Pumping from September 23, 2012 to October 10, 2012. The employer's work corresponds with the agricultural seasons, allowing it to pump manure before the crops are planted and after they are harvested. If the ground is too wet or cold it cannot work.

On October 7, 2012, the manager sent the claimant home from a job due to lack of work because it was raining. The manager indicated he would call the claimant in a couple days and when he did not hear from the manager the claimant called and sent text messages to the manager beginning October 9, 2012, but did not receive a response. The claimant called President/Owner Rodney Potter October 12, 2012, to ask what was going on with his employment. Mr. Potter stated he did not know but would speak to the manager and call him back. At 8:00 p.m. October 14, 2012, Mr. Potter contacted the claimant and stated the manager did not want him to return. The claimant asked why but Mr. Potter did not have an answer to his question.

On October 18, 2012, an employee on the New Hampton job quit and Mr. Potter called the claimant and offered him his former position at the same hours and wages. Mr. Potter wanted the claimant to work an upcoming job in Nebraska to begin October 21, 2012. The claimant stated he thought his employment was terminated because he was off work for one week and

Mr. Potter reiterated the offer of work and the claimant stated he did not have transportation to the job site because his driver's license was suspended, even though he drove without it to previous job sites, and his wife's vehicle needed parts, so they only had one car at that time. Mr. Potter explained he was driving to New Hampton and leaving in about two hours and the claimant could ride with him if he wished and then ride with another hired hand to Nebraska or could ride with his cousin. Later that evening the claimant texted Mr. Potter and said, "Rodney I'm sorry but I am not coming back to work. My wife and I talked it over and she told me no because of (the manager) not answering or calling me back or telling me face to face or the reason why I got let go in first place. Thank you for everything you've done for me..." The claimant testified he talked to his wife when she arrived at home after work and that in addition to not having transportation they did not have childcare for their son. He also stated he thought he had to leave in two hours for three weeks and could not get ready that soon. He did not ask Mr. Potter any additional questions about the situation of if he could go later and the employer did not tell him that was fine because he never asked but instead the claimant gave the impression he was not returning because of the manager. Mr. Potter also works full time in South Bend, Indiana, and although he was leaving from New Hampton to go back to Indiana October 18, 2012, he told the claimant he was going to Nebraska and would be on the job site beginning October 21, 2012. The claimant could have ridden to Nebraska with Mr. Potter on that date as he was not required to be able to leave in two hours October 18, 2012, if he wanted to work the Nebraska job.

The claimant was paid \$761.52 September 21, 2012; \$755.76 October 5, 2012; \$756.76 October 19, 2012; and \$755.76 November 2, 2012.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason October 10, 2012, and did not refuse a suitable offer of work October 18, 2012.

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 employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000). The manager failed to maintain contact with the claimant and then told Mr. Potter he did not want the claimant to return after he was laid off due to a lack of work October 10, 2012. Mr. Potter talked to the manager but could not provide the claimant with a reason the manager wanted to terminate his employment. The employer did not present any evidence of misconduct on the part of the claimant. Consequently, the administrative law judge must conclude the claimant was discharged for no disqualifying reason.

The remaining issue is whether the claimant refused a suitable offer of work.

The employer made an offer of work to the claimant October 18, 2013. That offer included the following terms: A hired hand position working the same hours for the same wages as he was working for the employer the week before. The claimant's average weekly wage at that time was \$738.00. The offer was made in the claimant's first week of unemployment. The offer meets the definition of "suitable offer." However, the claimant did not have a valid claim for unemployment insurance benefits at the time that offer was made in October 2012. Therefore, the administrative law judge does not have jurisdiction to evaluate the offer or refusal of work since the offer of employment took place outside of the benefit year. Benefits must be allowed.

DECISION:

The February 11, 2013, reference 02, decision is reversed. The claimant was discharged from work with the employer for no disqualifying reason. The claimant did refuse an offer of work made outside of his benefit year; thus, the administrative law judge has no jurisdiction to determine suitability of the offer. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css