

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ALEX M HAMMEN

Claimant

APPEAL NO. 19A-UI-01834-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 01/27/19

Claimant: Respondent (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 19, 2019, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on December 23, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on March 15, 2019. Claimant did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Mark Motsch represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant, which record indicates no benefits were disbursed to the claimant in connection with the claim. Exhibits 3 through 7 were received into evidence.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by the employer as a full-time kitchen clerk until December 19, 2018, when the employer discharged him from the employment. Immediate before discharging the claimant from the employment, the employer discovered the claimant smoking marijuana in a walk-in freezer. The employer had previously suspected that the claimant was smoking marijuana in the walk-in freezer and had started to monitor the claimant's workplace activities. At that time the employer discovered the claimant smoking marijuana in the walk-in freezer, the claimant refused to hand over the pipe he had been using to smoke marijuana in the workplace and became belligerent. The claimant then said, "I'm done." The employer proceeded to escort the claimant from the workplace.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See 871 IAC 24.25.

The evidence in the record established a discharge based on misconduct in connection with the employment. The weight of the evidence establishes that the claimant illegally possessed and used marijuana in the workplace on the last day of the employment. The claimant engaged in further misconduct by refusing to cooperate with the employer's investigation of the illegal activity. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

There is no overpayment of benefits issue to be addressed.

DECISION:

The February 19, 2019, reference 01, decision is reversed. The claimant was discharged for misconduct in connection with the employment. The discharge was effective December 19, 2018. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs