

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE R VASQUEZ
Claimant

APPEAL NO. 06A-UI-10248-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLOVERLEAF COLD STORAGE CO
Employer

**OC: 10-01-06 R: 01
Claimant: Appellant (1)**

Iowa Code § 96.5(1) – Voluntary Leaving
Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 13, 2006, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on November 6, 2006. Claimant participated through interpreter Ike Rocha and was represented by Jay Smith, Attorney at Law. Employer participated through Dave Junck, plant manager, and Doug Stewart, dock supervisor.

ISSUE:

The issue is whether claimant quit the employment without good cause attributable to the employer or was discharged.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time forklift operator from January 10, 2000 until September 28, 2006, when he quit. Claimant's forklift broke down and he took it to the shop to get fixed. Doug Stewart and Ralph Kammerer were standing by the shop entrance and asked him to unload a trailer with a pallet jack. Claimant said he was getting his lift fixed. Kammerer asked him to unload while waiting. He told Kammerer to decide what job he was to do since he was not going to do it all. Kammerer told him it did not matter where he was working because he could not do two jobs at once, it did not matter what side of the building he was working at, he was still getting paid, and employer needed him to work while his forklift was getting fixed. Kammerer also told claimant, "Fuck it. If you don't like it, go home." Then without saying more, claimant got on and drove the power jack down the dock, turned around, came back, parked and went to Junck's office. Claimant entered Junck's office, turned in his equipment, turned around and left. Junck was alone in the office at the time. Claimant did not talk to Junck about the encounter before he left, as he assumed Kammerer radioed ahead and Junck knew what had happened since he did not ask any questions. Junck was not aware of what had transpired and did not have enough time to ask claimant questions before he left the office.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged but voluntarily left his employment without good cause attributable to the employer.

Iowa Code § 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.

Iowa Code § 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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer.

Although Kammerer was inappropriately verbally abusive of claimant, and verbal abuse might give rise to a good cause reason for quitting, claimant did not follow up with Junck about that issue and since his assumption of having been fired was erroneous, claimant's failure to perform reasonable work duties as assigned, turning in his equipment and leaving without further discussion with the plant manager, was an abandonment of his job. Benefits are denied.

DECISION:

The October 13, 2006, reference 01, decision is affirmed. The claimant voluntarily left employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw