

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STANLEY BUHRMASTER
Claimant

APPEAL NO: 12A-UI-09398-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

GEORGE MILLER
MILLER TRUE VALUE HARDWARE
Employer

OC: 07-08-12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 30, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 28, 2012. The claimant participated in the hearing. George Miller, President/Owner, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a part-time sales associate for Miller True Value Hardware from October 10, 2011 to May 18, 2012. In the early months of 2012, President/Owner George Miller told the claimant he would like him to start learning how to run the register at the rental counter. The claimant said he did not even know how to turn on a computer or anything about computers and Mr. Miller stated there were plenty of employees to help him learn. Time went by and eventually the claimant went to co-worker John and asked him to show the claimant how to run the rental desk computer/register. John was showing the claimant what to do and the claimant was taking notes regarding how to run the register when John was called away and stated they would have to finish later. A few days later the claimant asked co-worker Wanda if she could show him how to run the rental register and she said she would if she had time but she did not know how to do it very well either. A few more days passed and the claimant asked co-worker Bill if he could help him with the rental desk register and he indicated he would if he had time. The claimant continued to do his regular work duties. On May 12, 2012, co-worker Rhonda was helping a customer with a large rototiller and she asked the claimant for assistance, which he provided. Later that day, co-worker Dean asked the claimant why he was not able to do anything on the rental desk and the claimant stated he helped a customer there earlier that day. The parties were close to getting into an argument on the sales floor so the claimant walked away. On May 13, 2012, Rhonda again called the claimant to help with a customer who wanted to rent a large rototiller. Mr. Miller's wife came back and said, "What are you doing Stan?" The claimant stated he was helping Rhonda with a customer and Mr. Miller's wife told him to "just go

back to work” because Dean was out there and could take care of everything. The claimant walked away to avoid a scene. On May 14, 2012, a monthly special ended and the claimant removed all the sale tags off the paint. Dean observed what he was doing and “jumped me,” asking, “Did you take those paint sale tickets off?” The claimant stated he had and Dean said he was not supposed to take them off and he needed to put them back on, even though a paint department employee saw him taking the tags off and did not tell the claimant to stop. During the morning of May 15, 2012, the claimant was helping a customer try to find an item. He went to the computer because he had been shown how to put in an item number to bring the merchandise up on the computer. Mr. Miller’s son, Tom, turned around and asked the claimant what he wanted, in front of the customer. Mr. Miller’s wife was talking loudly and over the claimant from the office so the claimant “gave up” on trying to help that customer, left her talking to Mr. Miller’s wife, and went to help another customer. On May 17, 2012, the claimant reported for work and went to get a radio when he was approached by Mr. Miller, who stated, “Since when do you tell my employees that you were hired strictly for electrical and plumbing?” and the claimant replied that was, “a downright lie.” Mr. Miller said none of his employees would work with the claimant but declined to provide the claimant with the names of the employees who would not work with him. Mr. Miller indicated four or five of his employees did not want to work with the claimant because he could not run the register. They discussed other issues and the claimant said Roger refused to do certain tasks but Mr. Miller expected the claimant to know everything in six months and Mr. Miller said, “I know.” The claimant stated other employees did not have time to teach him how to use the computer/register and Mr. Miller should have directed someone specifically to show him how to do it and Mr. Miller said, “Yeah, you’re right.” The claimant asked Mr. Miller what he wanted to do and Mr. Miller asked him if he would mind taking the day off and going home and the claimant said he would. Mr. Miller told him he would let him know his decision about the claimant’s employment status May 18, 2012. On that date Mr. Miller went to the claimant’s home and said, “I hope I’m not making the wrong decision but there is too much dissension to have you come back.” The claimant stated he did not want to be anywhere he was not wanted. Mr. Miller went to the claimant’s house to see if something could be worked out and to refute the claimant’s accusations that other employees did not help him learn the computer/register but decided “too many bridges had been burned” and the claimant’s continued employment was not good for either side.

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.

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.

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). Here, while the claimant was upset because he stated he could not get cooperation from other employees, the evidence establishes the claimant did not intend to quit his job. The employer went to his home May 18, 2012, and told him he hoped he was not making the wrong decision but "there is too much dissension to have you come back." Those words show the employer discharged the claimant from employment. Consequently, this case must be analyzed as a termination of employment.

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 claimant was intimidated by the computer/register and was reticent to learn it. The employer reasonably expected that he do so at some point. When the claimant did ask other employees to teach him how to use the computer, he was usually told they did not have time, or they would be called away to help customers shortly after starting to show the claimant how to run the machine. Both the claimant and the other employees were frustrated about the situation and the employer should have set aside a period of time and assigned an employee to train the claimant rather than have the claimant try to catch another busy employee and ask that co-worker to teach him. While the employer maintains the claimant voluntarily quit his job May 15, 2012, that is inconsistent with Mr. Miller going to the claimant's house May 18, 2012, and telling him that although he might be making the wrong decision there was too much dissension for the claimant to return to his job. The employer did not provide sufficient training to the claimant on how to run the computer/register for the claimant's failure to do so to be considered disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The July 30, 2012, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs