

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JERRY L POWELL
1403 AETNA
BURLINGTON IA 52601

FARM KING SUPPLY INC
730 N BOWER
MACOMB IL 61455

Appeal Number: 04A-UI-09054-SWT
OC: 08/01/04 R: 04
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 20, 2004, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on September 14, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Andrea Gooding participated in the hearing on behalf of the employer with witnesses, Robbie Ford and Tom Mueller.

FINDINGS OF FACT:

The claimant worked full time for the employer as a tire serviceman and merchandise assembler from July 13, 1999 to July 30, 2004. Robbie Ford was the store manager and Tom Mueller was the assistant manager.

On July 30, 2004, the claimant was assigned by a manager to assemble a glider in the morning. Later that morning, Ford had sent another tire serviceman home because he had refused to attach some carpeting to a pole. When the claimant returned to the tire service area, Ford reprimanded him for leaving the tire service area, which she believed was understaffed. She told the claimant that the tire area was his top priority and that he was to stay in the tire area and work on service tickets.

Ford later directed Mueller to have someone put up the carpet on the pole. She did not tell Mueller about the reprimand she had given the claimant for leaving the service area. Mueller directed the claimant to wrap the pole with carpet. The claimant told Mueller that Ford had told him to stay in the service area and he would not leave unless Ford told him to. Mueller told the claimant to go home if he was not going to do as Mueller asked him. Mueller did not tell the claimant to return to work the next day or anytime after that day.

The claimant believed that Mueller had discharged him when he told the claimant to go home and did not say anything about returning to work. The claimant went to an assistant manager, Angie Kirshner, and turned in his time card. He told Kirshner that Mueller had just fired him. Kirshner did not say anything to the claimant that would cause him to believe that he had not been terminated. Mueller and Kirshner each told Ford what had happened with the claimant. The next day, the claimant turned in his keys to Ford and asked about his profit-sharing check. Neither party said anything or asked anything about the claimant's employment status. Ford knew that the claimant alleged Mueller discharged him, which she did not believe was true, but she decided to not say anything because she did not want to continue to employ the claimant because of the past problems with the claimant. As a result, the claimant reasonably believed he had been fired.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code Sections 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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant reasonably believed he was discharged when Mueller told him to go home but did not say to return to work. His belief was reinforced by Ford when she did not tell him that he was not being fired, even though she knew the claimant was alleging that Mueller fired him. The claimant did not intend to quit his job and would have returned to work as scheduled if Mueller had told him that he was being sent home for the day.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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's reaction to Mueller's request that he wrap carpet around the pole was understandable. He had been just told that tire servicing was his top priority by the store manager. No willful and substantial misconduct has been proven in this case.

DECISION:

The unemployment insurance decision dated August 20, 2004, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/b