

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HARRY D ST JOHN**  
Claimant

**APPEAL NO. 13A-UI-04114-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SAC & FOX TRIBE  
MESKWAKI BINGO CASINO & HOTEL**  
Employer

**OC: 03/10/13  
Claimant: Appellant (2)**

Section 96.5(1) – Quit  
Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Harry D. St. John, filed an appeal from a decision dated March 28, 2013, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on May 13, 2013. The claimant participated on his own behalf with Kay St. John and was represented by Matt Reilly. The employer, Meskwaki Bingo Casino and Hotel (Meskwaki) participated by Human Resources Lucie Roberts and Director of Live Games Michael Tobias.

**ISSUE:**

The issue is whether the claimant quit work with good cause attributable to the employer or was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

**FINDINGS OF FACT:**

Harry St. John was employed by Meskwaki from May 2, 2006 until January 21, 2013 as a part-time dealer. The claimant was injured in a non-work-related incident December 26, 2012, and was hospitalized until January 9, 2013, and in a nursing facility until January 19, 2013.

His spouse obtained an FML application on December 31, 2012, but it was either not received by the employer or else there were some corrections to be made. She went again to the casino on January 21, 2013. The employer stated Live Games Director Michael Tobias talked with her and said the claimant's convalescence would likely take longer than the 12 weeks of FML and if he could not return to work at the end of that period he would be discharged. But if he resigned then he could be rehired as soon as he was released to return to work. Ms. St. John said she was told by Mary Senache her husband had been discharged for missing too much work and she relayed that information to Mr. St. John when she returned home.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

There is no evidence the claimant resigned. No documentation has been provided with his signature on it stating he was resigning for medical reasons. The employer could not even be sure to whom Mr. St. John allegedly gave any such resignation.

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.

All evidence in this matter points to an involuntary separation. The claimant was off work due to medical problems not related to his job. The employer was aware of the situation and that he was attempting to be approved for FML. If Administrative Assistant Mary Senache was involved in this matter either as a quit or discharge, the employer did not supply her as a witness.

If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's denial of a quit. Absences due to a properly reported illness do not constitute misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982). Disqualification may not be imposed.

**DECISION:**

The representative's decision of March 28, 2013, reference 01, is reversed. Harry St. John is qualified for benefits, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs