

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON H BAKER
Claimant

APPEAL NO. 10A-UI-09736-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VERMEER MANUFACTURING CO INC
Employer

OC: 11/15/09
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Jason Baker filed a timely appeal from the July 1, 2010, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on August 26, 2010. Mr. Baker participated personally and was represented by Attorney Brian Goldsmith. Jill Anderson, Human Resources Business Partner, represented the employer and presented additional testimony through Dwaine Bauman, Area Manager. Exhibits One, Two, Three, A, B and C were received into evidence.

ISSUE:

Whether Mr. Baker separated from the employment for reason that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jason Baker was employed by Vermeer Manufacturing Company as a full-time welder from 2005 until June 8, 2010. Mr. Baker's immediate supervisors were Chad Swank, Group Leader, and Duane Bauman, Manager. Mr. Baker's usual work hours were 6:00 a.m. to 3:30 p.m., Monday through Friday.

On June 8, 2010, Mr. Baker left the workplace around 9:00 a.m. Mr. Baker told a coworker he was going to his vehicle to do something with his welding hat. Mr. Baker was not feeling well and decided to leave rather than return to work.

Mr. Baker had been in a motor vehicle accident in 1998 and had suffered a midclavicular fracture. During the period of his employment with Vermeer, Mr. Baker would experience shoulder and/or neck pain. At no point did Mr. Baker, or any physician with whom he sought treatment, provide the employer with any medical documentation to indicate that Mr. Baker required a change in his work duties for health reasons. Two weeks prior to his separation from the employment, Mr. Baker spoke to Mr. Bauman about his auto accident, about his dislike for medical doctors, and about his shoulder pain. The employer had slowed the work somewhat

out of concern for Ms. Baker's shoulder and in anticipation of receiving medical restriction documentation, which never came.

Mr. Baker was experiencing neck pain and dizziness on the morning of June 8, when he decided to leave work around break time, rather than return to his duties after the break. Prior to going to his car or leaving work for the day, Mr. Baker had not said anything to indicate he intended to sever the employment relationship. A short while after morning break, Mr. Swank noted Mr. Baker's absence. Mr. Bauman telephoned Mr. Baker to see whether he was okay. Mr. Baker said he was not okay and that his neck had been hurting. Mr. Bauman told Mr. Baker that the employer deemed his unauthorized early departure from the workplace a voluntary quit. Mr. Baker indicated that he did not want to lose his job and asked if it really had to be that way.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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 weight of the evidence in the record establishes a discharge for attendance, not a voluntary quit. The weight of the evidence indicates that Mr. Baker left work early without authorization on June 8, 2010. Mr. Baker left for the day because he was not feeling well. Mr. Baker did not announce an intention to sever the employment relationship. Mr. Baker made it clear to the employer shortly after he left without authorization that he did not want to separate from the employer. The employer had no reason to believe that Mr. Baker intended to separate from the employment when he left. The employer seized upon one of its work rules to assert Mr. Baker had quit the employment merely because he had left early without authorization.

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.

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

A single unexcused absence does not constitute misconduct in connection with the employment. See Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989).

The weight of the evidence in the record establishes a single unexcused absence that occurred on June 8, 2010. The single unexcused absence did not constitute misconduct in connection with the employment that would disqualify Mr. Baker for unemployment insurance benefits. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Baker was discharged for no disqualifying reason. Accordingly, Mr. Baker is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Baker.

DECISION:

The Agency representative's July 1, 2010, reference 02, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs