

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL K VANDERSEE
Claimant

APPEAL NO. 10A-UI-05031-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLYING J INC
Employer

**Original Claim: 02/28/10
Claimant: Appellant (5)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed a representative's March 23, 2010 decision (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. A telephone hearing was held on May 13, 2010. The claimant participated in the hearing. Phil Roland, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on January 14, 2008. The claimant worked as a full-time co-manager. The employer knew the claimant had a medical condition, but had no understanding the claimant needed any accommodations as a result of his medical condition.

The employer's policy allowed the claimant to personally pay for some services or product the employer received. The employer then reimbursed the claimant for the amount he personally paid out on the employer's behalf. In early February 2010, the employer learned that two businesses asked the employer to pay an outstanding bill. The employer believed the claimant had previously paid these bills from his personal checking account because the employer had already reimbursed the claimant for these bills. The employer learned the outstanding balances were for product or services the employer received on July 13, August 28, and December 8 or 9. The outstanding bills amounted to more than \$2,100. The claimant knew that even if he mailed a check to these businesses, as of February 2010 none of these businesses received the claimant's personal check for the outstanding bill. On February 24, the employer informed the claimant he could resign or the employer would discharge him. The employer concluded the claimant had misappropriated the employer's funds. The claimant chose to resign instead of having the employer discharge him. After the employer confronted the claimant about paying these bills, the claimant ultimately paid the bills.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if his voluntary quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-1, 2-a. The claimant asserted he resigned because his physician advised him to quit because the stress of the job adversely affected his health. Stress may have affected the claimant's health, but the claimant's testimony is less than credible. The claimant testified that nothing of significance occurred on February 24 to prompt his resignation. The claimant did not mention the employer gave him the choice to resign or be discharged. Given the claimant's questioned credibility and his failure to give the employer any notice, a preponderance of the credible evidence indicates the employer initiated the employment by telling the claimant he could resign or the employer would discharge him. For unemployment insurance purposes, the employer initiated the employment separation and discharged the claimant.

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Even if the claimant mailed his personal checks to the three businesses that had outstanding bills for service or product provided to the employer, the claimant knew in early February 2010 his checks had not been cashed and the businesses had not been paid. The claimant did not stop payment on any of his personal checks or issue new checks to any business even though the employer had already paid him for paying these bills. The claimant's conduct regarding these bills constitutes an intentional and substantial disregard of the standard of behavior the employer had a right to expect from him. The employer discharged the claimant for reasons constituting work-connected misconduct. As of February 28, 2010, the claimant is not qualified to receive benefits.

DECISION:

The representative's March 23, 2010 decision (reference 01) is modified, but the modification has no legal consequence. The claimant did not voluntarily quit his employment. Instead, the employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 28, 2010. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw