

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRAIG A LINKER
Claimant

APPEAL NO: 14A-UI-10846-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MULCH MART LLC
Employer

**OC: 09/14/14
Claimant: Appellant (1)**

Iowa Code § 96.5(2) a- Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's October 7, 2014 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had been discharged for disqualifying reasons. The claimant participated at the November 6 hearing. Rick Johnson, the owner, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on March 31, 2014. The claimant worked as a full time delivery driver. In early August 2014, the claimant learned his cousin had passed away and the funeral would be scheduled in Colorado. The claimant made a comment the only time he went to Colorado was for a funeral. If the claimant mentioned the date of the funeral, the employer did not grant or deny the claimant's time off for the funeral that was scheduled on September 5 or 6.

The claimant worked as scheduled on August 30. He was not scheduled to work on Labor Day, September 1. He was scheduled to work on Tuesday, September 2, but notified the employer he was ill and unable to work. The employer tried to contact the claimant by phone on September 2, but the claimant did not respond or call back. The claimant was not scheduled to work on September 3 or 4.

At 2 a.m. on September 4, the claimant sent a text message to the employer that he would not be at work on September 5 and 6. When the employer tried to call the claimant, the claimant could not pick up calls from out of state and did not respond to the employer's calls or text messages.

When the claimant returned from Colorado on September 7, he sent the employer a text asking if he still had a job. The employer sent the claimant a text asking him to call the employer. The claimant did not call the employer. The employer then sent the claimant a text message informing him that the employer had wanted him to work and had not. The employer told the claimant that the employer considered him to have resigned when he did report to work on September 5 and 6.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily 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 did not voluntarily quit this employment. The employer discharged him.

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant acknowledged the employer had not specifically granted him time off on September 5 and 6 to go to a cousin's funeral in Colorado. The claimant's failure to verify he had time off before he left for Colorado, in addition to failing to actually calling and talking to the employer instead of sending a text at 2 a.m. on September 4, amounts to an intentional and substantial disregard of the employer's interests. The employer discharged the claimant for reasons that amount to work-connected misconduct. As of September 14, 2014, the claimant is not qualified to receive benefits.

DECISION:

The representative's October 7, 2014 determination (reference 01) is affirmed. The employer discharged the claimant for reasons constituting work-connected misconduct. As of September 14, 2014, the claimant is disqualified from receiving unemployment insurance benefits. 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/css