

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ELIAS C AGUIRRE
Claimant

APPEAL 16A-UI-05369-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SMITHFIELD FARMLAND CORP
Employer

OC: 04/24/16
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 11, 2016 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit his employment. The parties were properly notified of the hearing. A telephone hearing was held on May 25, 2016. The claimant, Elias C. Aguirre, participated. Claimant was assisted during the hearing by interpreter Harvey from CTS Language Link. The employer, Smithfield Farmland Corp., participated through Becky Jacobsen; Bill Knudsen, kill floor supervisor; and Jeff Thies, lower kill supervisor.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a skinner operator from October 8, 2003 until this employment ended on April 22, 2016, when he was discharged.

On claimant's final day of employment, the employer issued him a verbal disciplinary action. Claimant became upset by this and said that the employer did not need to fire him because he quit. Knudsen clarified that claimant was not discharged and this was solely a verbal warning. Following this meeting, claimant returned to the floor and resumed working. Approximately 20 minutes later, claimant began to feel ill. He rubbed his stomach, waved to Thies, and tried to communicate that he needed to go home. Thies believed claimant was only indicating he needed to use the restroom, as this is how he had told Thies he needed to use the restroom in the past. Thies got Eric Owens, a red hat, to come and relieve claimant, and claimant punched out and went home.

Claimant returned to work the following day. Prior to punching in, Knudsen told him that he needed to go home; as he had quit the previous day. Claimant denies that he quit his employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code § 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.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989); see also Iowa Admin. Code r. 871-24.25(35). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). In this case, claimant believed that he had communicated to Thies that he was not feeling well and needed to go home. He had no intent to end his employment when he left work on April 22, 2016. Therefore, this case is properly analyzed as a discharge from employment, rather than a voluntary quit.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial."

Claimant testified that he told Thies he needed to go home because he was not feeling well, but Thies denies claimant told him this. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds claimant attempted to notify his employer that he needed to leave because he felt ill. Claimant does not speak English, and he tried to tell Thies, both through words and gestures, that he needed to leave. The administrative law judge believes Thies simply assumed claimant needed to use the restroom, as he was rubbing his stomach in the same way that he does to communicate to Thies that he needed to use the restroom.

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Claimant and his employer had a miscommunication that resulted in claimant leaving from work without permission. This is not disqualifying misconduct, particularly as claimant had never been warned for this issue in the past and was not aware that he needed to take additional action to ensure he had permission to leave. The employer has not met the burden of proof to establish that claimant engaged in misconduct. Benefits are allowed.

DECISION:

The May 11, 2016 (reference 01) decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits withheld shall be paid to claimant.

Elizabeth Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/can