

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GLENN GILLESPIE
Claimant

APPEAL NO. 11A-UI-08626-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF DES MOINES PAYROLL DEPT
Employer

**OC: 05/29/11
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Glenn Gillespie filed an appeal from a representative's decision dated June 22, 2011, reference 01, which denied benefits based on his separation from the City of Des Moines. After due notice was issued, a hearing was held by telephone on July 21, 2011. Mr. Gillespie participated personally and offered additional testimony from Steve Lundberg and Jeff Allen. The employer participated by Sara Thies, sanitation administrator, and was represented by Carol Moser, attorney at law.

ISSUE:

At issue in this matter is whether Mr. Gillespie was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Gillespie began working for the City of Des Moines on May 21, 1990. He was last employed full-time as a senior refuse collector. He was discharged for walking off the job on May 31, 2011.

Mr. Gillespie was scheduled to work from 7:00 a.m. until 3:30 p.m. on May 31. When he reported to work as scheduled, he was served notice of a pre-disciplinary hearing to be held the following week. The hearing was to discuss his use of time off during the month of May. He became angry and spoke to his supervisor. He told the supervisor he was not going to let them fire him "like this." He also indicated he was leaving. The supervisor asked him not to leave, but Mr. Gillespie replied, "Fuck it, I'm going home." He then left the premises. He told a coworker he was leaving because he was ill. The employer called him later that day and told him not to return until further notice.

Mr. Gillespie sustained a work-related injury to his right knee in 2008. He has occasional flare-ups that require him to miss time from work. He had last used sick leave five to six weeks before his separation.

REASONING AND CONCLUSIONS OF LAW:

The employer contended that Mr. Gillespie voluntarily quit when he walked off the job on May 31. To find a voluntary quit, there must be evidence of an intention to sever the employment relationship accompanied by some overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). Leaving the work site without authorization is not sufficient, in and of itself, to establish an intent to end the working relationship. When he left on May 31, Mr. Gillespie did not make any statement that could be construed as indicating a desire to leave the City of Des Moines. Whether he would have returned to work the next workday is unknown, as the employer notified him on the afternoon of May 31 that he was not to return.

It is concluded that the employer initiated Mr. Gillespie's separation from employment when it would not allow him to return. As such, the separation was a discharge. An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Gillespie was discharged for leaving work after being told not to do so. An employer has the right to expect that employees will remain at work unless permission to leave is granted. Mr. Gillespie knew or should have known that walking off the job after being expressly told not to was contrary to the standards the employer expected of him.

Mr. Gillespie contended that he left early on May 31 due to illness. The administrative law judge did not find this contention persuasive. He testified that he reported for his 7:00 a.m. shift in spite of being too sick to work. He contended that he intended to try to work. However, he made no attempt at work, as he left approximately five minutes after his arrival. Mr. Gillespie testified that he had not used sick leave for five to six weeks before his separation. The administrative law judge is not inclined to believe it was only coincidental that he was having problems on the same day he left work early in anger. For the above reasons, the administrative law judge concludes that Mr. Gillespie was not compelled to leave work early because of illness or any other emergency situation on May 31.

The decision to leave was prompted by receipt of the pre-disciplinary hearing notice. Mr. Gillespie discussed the notice with the supervisor but did not indicate he was ill and leaving work. He only addressed his belief that the notice was leading to his discharge. The language Mr. Gillespie used when leaving suggests that he was leaving in anger and not because he was ill. Inasmuch as Mr. Gillespie was not ill on May 31, his unauthorized early departure constituted misconduct, especially in light of the fact that he was told not to leave. For the reasons cited herein, benefits are denied.

DECISION:

The representative's decision dated June 22, 2011, reference 01, is hereby affirmed. Mr. Gillespie was discharged for misconduct in connection with his employment. Benefits are denied until he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw