

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SONG HEN
Claimant

APPEAL NO. 14A-UI-12220-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVENTURE LANDS OF AMERICA
Employer

**OC: 10/26/14
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated November 19, 2014, reference 01, that concluded Song Hen's discharge was not for work-connected misconduct. A telephone hearing was held on December 15, 2014. The parties were properly notified about the hearing. Song Hen participated in the hearing. Joseph Formaro participated in the hearing on behalf of the employer.

ISSUE:

Was Song Hen discharged for work-connected misconduct?

FINDINGS OF FACT:

Song Hen worked for the employer as a laundry attendant from May 31, 2012, to October 25, 2014. He worked with his wife, Nok Noeuy. Jeanette DeJesus was their supervisor.

Hen and Noeuy reported to work as scheduled on October 25. In the afternoon, DeJesus brought in a big pile of laundry to fold and told them when they were done they could go home if they wanted to. Hen and Noeuy finished folding the laundry and left work before the end of their shift. Hen believed DeJesus had given them permission to leave.

Hen reported to work as scheduled on October 26, 2014. DeJesus told Hen that he and Noeuy were terminated for walking off the job the day before.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Employment Appeal Board*, 492 N.W.2d 438, 440 (Iowa App. 1992). Song

Hen never intended to quit employment when he left work on October 25, as shown by the fact that he reported to work as scheduled the next day. The separation was a discharge.

The next question in this case is whether Hen was discharged for work-connected misconduct as defined by the unemployment insurance law.

The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Iowa Code § 96.6-2; *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6, 11 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. Hen testified credibly about what happened on October 25. The employer's evidence on this issue was secondhand information since DeJesus was not present at the hearing to testify and answer questions. Hen's testimony is entitled to greater weigh.

The employer has failed to meet its burden of proof in this case. No willful and substantial misconduct has been proven. Hen did not leave work without permission on October 25, 2014, which was the reason given for his termination.

DECISION:

The unemployment insurance decision dated November 19, 2014, reference 01, is affirmed. Song Hen is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

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