

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HUGO N NEGRETE-PULE
Claimant

APPEAL NO. 08A-UI-05839-SW

**ADMINISTRATIVE LAW JUDGE
DECISION**

JAMES R HARMEYER INC
Employer

OC: 05/18/08 R: 02
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant, Hugo Negrete-Pule, appealed an unemployment insurance decision dated June 19, 2008, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. Hearings were held on July 28 and August 1, 2008. The parties were properly notified about the hearing. The appeal was consolidated with the appeal of Moises Alegria for the purpose of hearing the case. Negrete-Pule and Alegria participated in the hearing with witnesses, Karen Larson and Armando Gonzales. Robert Wright Jr., attorney at law, represented the claimants. James Harmeyer participated in the hearing on behalf of the employer with witnesses, John Lauer, Cory Bode, and Tyler Wright. Patricia Vargas acted as an interpreter for the hearing.

ISSUE:

Was Negrete-Pule discharged for work-connected misconduct?

FINDINGS OF FACT:

Negrete-Pule worked for the employer as a general laborer in the employer's residential home building business for about a year. His last day of work was May 19, 2008. Cory Bode, superintendent, was his supervisor. James Harmeyer is the owner of the business.

About three months before Negrete-Pule's employment's ended, he and two other Hispanic employees, Moises Alegria and Armando Gonzales, complained to Harmeyer about how Bode treated them. They told him that he pushed them too hard, yelled at them, and directed racial comments toward them. Harmeyer told them that he would speak to Bode about the matter, and they were to contact him personally if the problems continued. Harmeyer warned Bode that there would be consequences if he found out Bode was mistreating the Hispanic workers and requested that he apologize to Negrete-Pule, Alegria, and Gonzales. Bode met with Negrete-Pule, Alegria, and Gonzales and told them he was sorry if he did anything to offend them.

On May 19, 2008, Negrete-Pule, Alegria, and Gonzales reported to work as scheduled. Bode assigned Negrete-Pule and Alegria to work together on another home. Gonzales was to stay

and work at the home show location. Bode told Negrete-Pule and Alegria that they needed to finish the job by Friday and would have to work late hours to get the job done. He accused them of being “fucking lazy” because he was dissatisfied with their progress on the job. When Negrete-Pule chuckled and commented that they would work until 9:00 or 11:00 p.m. or whatever, Bode asked him why he was laughing and told him he was fucking stupid.

After Negrete-Pule and Alegria left for their job site, Gonzales complained to Bode about how he treated them. He directed profanity at Bode and angrily pointed at him. Bode got out of the truck, and he and Gonzales launched into a heated verbal argument with both Bode and Gonzales exchanging insults and profanities. Bode challenged Gonzales to hit him.

Gonzales then told Bode that he wanted to talk to Harmeyer. Bode told Gonzales that he was not going to call Harmeyer, but if Gonzales wanted to call Harmeyer he did not care. Gonzales called Harmeyer to report the problems he was having with Bode. Harmeyer told him that he could not come right away because he was with a customer. He told him to go back to work and he would talk to him later. Harmeyer called Bode to get his side of what had happened. Harmeyer told Bode that he would send another supervisor, John Lauer, over to intervene in the situation.

Gonzales called Negrete-Pule and Alegria and told them about his problem with Bode. He told Negrete-Pule and Alegria that they should come back to the home show site because Harmeyer would be there in 15 to 20 minutes to talk to them. Negrete-Pule and Alegria believed that Gonzales was communicating an instruction from Harmeyer so they turned around and returned to home show location.

When Negrete-Pule and Alegria arrived back at the home show location, Bode asked what they were doing. Negrete-Pule told Bode that Harmeyer wanted to talk to them and they were going to wait to talk to him.

Negrete-Pule and Alegria started performing work around the home show house and expected Harmeyer would be coming to talk to them. After about 15 minutes, Bode informed Negrete-Pule, Alegria, and Gonzales that they were fired for refusing to work. The three laborers turned in their keys and phones because they reasonably believed based on Bode’s statement that they were fired.

When Harmeyer learned about what had happened he tried to set up a meeting about Negrete-Pule, Alegria, and Gonzales returning to work. The evidence does not establish that Harmeyer spoke personally to Negrete-Pule or Alegria and offered them work or sent them a registered letter offering them work.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The preponderance of the credible evidence establishes that Bode informed Negrete-Pule, Alegria, and Gonzales that they were fired. Negrete-Pule, Alegria, and Gonzales reasonably believed they were terminated by the employer.

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. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (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 key facts are that Negrete-Pule and Alegria believed Gonzales was communicating an instruction from Harmeyer to go back to the home show site because he wanted to talk to them. This is credible because Harmeyer had previously directed them to contact him personally if there were further issues with Bode and he would handle the problem. Negrete-Pule and Alegria were working while waiting for Harmeyer to arrive, which was confirmed by the other laborer, Tyler Wright. This is inconsistent with the employer's assertion that they were refusing to work until they talked to Harmeyer. No willful and substantial misconduct has been proven in this case.

There was evidence about attempts to contact Negrete-Pule and Alegria about returning to work. This raises a potential refusal of work issue under Iowa Code section 96.5-3, which was not listed as an issue on the hearing notice. Remand of this issue is not appropriate because the rules require offers of work to be made personally or by registered letter, which did not occur here based on the evidence. 871 IAC 24.24(1)a. If the employer believes this issue should be adjudicated, it must notify the Unemployment Insurance Services Division of the facts that justify a disqualification under Iowa Code section 96.5-3 and 871 IAC 24.24(1)a.

DECISION:

The unemployment insurance decision dated June 19, 2008, reference 01, is reversed. Hugo Negrete-Pule is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs