

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVE BERTRAND
Claimant

Case No. 22IWDUI0076

IWD Appeal No. 22A-UI-00615

SIoux HONEY ASSOC COOPERATIVE
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/15/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the November 23, 2021 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 11, 2022. The claimant, Steve Bertrand, did not appear. The employer, Sioux Honey Association Cooperative, participated through human resources manager Angel White and plant manager Kevin Begnoche. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant began working for the employer on August 2, 2021. He was discharged on October 20, 2021. Between those two dates, he served as assistant production line supervisor in a full-time capacity. His immediate supervisor was Marvin Rodriguez.

On October 20, an employee whom the claimant supervised ("the complaining employee") submitted a written complaint to plant manager Kevin Begnoche. The complaint detailed an incident that occurred a few days prior. The complaining employee wrote that she was working on the production line, near claimant. A third employee came over to check on something on the production line. When this third employee approached the line, claimant remarked of the third employee, "That guy there is a faggot and he should have stayed in the closet where he belonged, like back in the day." He again referred to the employee as a "fucking faggot."

In addition, apparently during the same remarks, claimant said of his supervisor, Rodriguez, that he was "a fucking dickhead" and that he "couldn't wait to tell him to his face." He also said that

Rodriguez "likes to take care of the Mexicans" under his supervision but that he (claimant) "wouldn't do that" and would instead "take care of the white people."

An investigation occurred, virtually immediately. Begnoche asked White to assist, and the two of them met with claimant. Claimant denied making the comments about Rodriguez but admitted making the comments about the other employee. He was terminated.

Claimant filed for unemployment benefits. He was denied, and appealed the denial.

The employer has a written policy prohibiting discrimination among its employees.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 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 section 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 Administrative Code rule 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).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806, 808 (Iowa Ct. App. 1984).

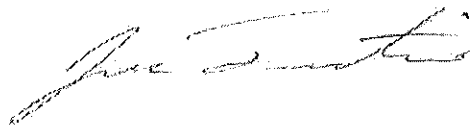
First it must be determined whether claimant quit or was discharged from employment. A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992).

Here claimant was discharged. He had no intent to quit. The credible evidence is that he was terminated.

The next question is whether claimant was discharged for disqualifying misconduct. Here the undersigned concludes there was disqualifying misconduct. Claimant was in a supervisory role. He made, and admitted to making, homophobic comments about a worker he supervised. This is antithetical to the employer's policy of non-discrimination and reflects willful disregard of the employer's interest in a diverse and non-discriminatory workplace. Benefits are denied.

DECISION:

The November 23, 2021 (reference 01) unemployment insurance decision is affirmed. Benefits are denied.



Joseph Ferrentino
Administrative Law Judge
Department of Inspections and Appeals
Administrative Hearings Division

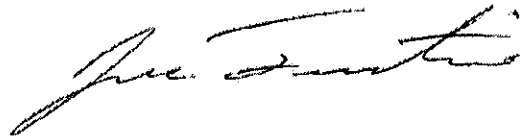
February 14, 2022
Decision Dated and Mailed

JF/lb

CC: : Steve Bertrand, Claimant (by first class mail)
Sioux Honey Assoc Cooperative, Employer (by first class mail)
Natali Atkinson, IWD (by email)
Joni Benson, IWD (By AEDMS)

Case Title: STEVE BERTRAND V. SIOUX HONEY ASSOC COOPERATIVE
Case Number: 22IWDUI0076
Type: Proposed Decision

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Joe Ferrentino", written in a cursive style.

Joseph Ferrentino, Administrative Law Judge