

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRET M SANDERS**

Claimant

**APPEAL NO: 14A-UI-01444-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GRAZZINI BROTHERS & COMPANY**

Employer

**OC: 01/12/14**

**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's February 5, 2014 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated in the March 11 consolidated hearing with his father, Mark Campbell (appeal 14A-UI-01888.) Greg Grazzini and Amanda Eiyk appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits.

**ISSUE:**

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in May 2013. The employer hired the claimant to work as a full-time tile finisher. The employer has projects in different states. The most recent project the claimant and his father worked at was in Kansas. Tom Harrington was the supervisor on this project. In September, the claimant and his father started talking about taking a vacation in December. The claimant and his father both worked for the employer. Harrington knew the claimant and his father were planning a vacation.

After tickets had been purchased, Campbell sent Harrington a text indicating he planned to take a vacation from December 20 to 27, 2013. After Harrington received this text, the claimant confirmed to Harrington that he would also be gone. The claimant and his father went on vacation together.

After the claimant and his father returned from their vacation on Friday, December 27, they sent a text to Harrington on December 30. The text informed Harrington that they were having problems getting to the job site in Kansas. After they returned from their vacation, the claimant

and his father learned that other crew members, who they rode to the job site, had been laid off or let go. As a result, they did not have ride to get to the Kansas job site. They did not know that Harrington had been dismissed from the Kansas job site on December 29, 2013.

The claimant and his father waited for Harrington to contact them. On January 9, the claimant's father sent Harrington another text asking him again when he should report to work. When Harrington did not make a timely response, Campbell sent the same message to Harrington's assistant on Monday, January 13. This message was forwarded to the new supervisor, Earl. Earl then informed the claimant and his father they were no longer needed because another crew had been brought in by the general contractor and they had been replaced.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-(1), (2)a. The evidence establishes the claimant went on an approved vacation, December 20 through 27. The claimant timely contacted Harrington on Monday, December 30. The claimant did not know Harrington had been released from working at the Kansas job site. Since it was over the holiday, the claimant made another reasonable attempt to find out if he still had a job by sending Harrington another text message. It was not unreasonable for the claimant to question if he had a job or not since other crew members had been laid off when he was on vacation. Based on the claimant's attempts to contact Harrington, the claimant did not intend to quit his employment. Instead, the employer, through the general contractor, effectively ended the claimant's employment by bringing in employees from another crew to work at the Kansas job site.

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 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 law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant was laid off from work when employees from another crew were brought in to work at the Kansas job that he had been working at. The evidence does not establish that the claimant committed work-connected misconduct. As of January 12, 2014, the claimant is qualified to receive benefits.

**DECISION:**

The representative's February 5, 2014 determination (reference 01) is reversed. The claimant did not voluntarily quit his employment. Instead, the general contractor of the job site ended the claimant's employment by bringing in a new crew to work at the Kansas job site. The claimant did not commit work-connected misconduct. As of January 12, 2014, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs