

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER J RAMSEY
Claimant

APPEAL NO. 08A-UI-09941-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DPLM INC
Employer

OC: 12/23/07 R: 02
Claimant: Appellant (1)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Christopher Ramsey filed an appeal from a representative's decision dated October 15, 2008, reference 02, which denied benefits based upon his separation from DPLM, Inc. After due notice was issued, a hearing was held by telephone on November 12, 2008. Mr. Ramsey participated personally. The employer participated by Brent Dennis, Field Operations Manager, and Paul Volkers, Job Superintendent.

ISSUE:

The issue in this matter is whether the claimant quit for good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant was a long-term employee. Mr. Ramsey continued to be employed by the company when new owners bought the business in February 2008. The claimant last held the position of full-time project foreman on a company highway striping crew. Mr. Ramsey was separated from his employment when he failed to report or to provide notification of any absences on Saturday night, September 6, and Sunday night, September 7, 2008. The claimant had been scheduled to work on the nighttime highway striping project and his name had been posted on the company scheduling board. Although work was limited on the night of Saturday, September 6, 2008 due to rain, the crew worked approximately two hours. Employees are not authorized to remain away from work unless they are personally contacted by the company within one hour before the starting time and informed that the project is being rained out for the shift. The company attempted to contact Mr. Ramsey a number of times on the cell phone provided by the company, however, Mr. Ramsey did not answer the phone or return calls.

On Monday, September 8, 2008, the company left the claimant a message telling him to turn in company equipment based upon his failure to report for scheduled work shifts and provide notification for the two preceding shifts. Mr. Ramsey personally met with Brent Dennis that day.

Although given the opportunity to provide an explanation, the claimant did not do so and was discharged from employment.

It is the claimant's position that when he looked at the scheduling board for the Saturday night, September 6, 2008 shift he "did not see" his name. It is the claimant's further position that he did not receive a telephone call from the employer informing him that any shifts were rained out but concluded that the company would not be working because of inclement weather.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Ramsey was discharged for misconduct in connection with employment. It does.

The evidence in the record establishes that the claimant was scheduled to work on Saturday night, September 6, 2008 as well as Sunday night, September 7, 2008 and did not report or provide notification to the employer. The evidence in the record establishes that the claimant had been scheduled to work and that other workers who had been scheduled reported for duty as expected. The evidence in the record also establishes that Mr. Ramsey did not receive a telephone call from the company specifically informing him that work would not take place due to inclement weather. The procedure in the company is that workers will report for work unless specifically notified otherwise by company management prior to the beginning of the work shift. The administrative law judge concludes that the claimant's repeated failure to report for scheduled work or provide notification to the employer showed a willful disregard for the employer's interest and standards of behavior.

Although the administrative law judge is aware that Mr. Ramsey maintains that he did not "see" his name on the schedule and believed that inclement weather would prevent work, the administrative law judge finds the claimant's testimony to strain credibility. The claimant was provided with a company cell phone and had the ability to contact the employer to determine if work was going to take place if inclement made work questionable. The claimant, however, did not do so. The administrative law judge also notes that the claimant was given a clear opportunity to explain to his employer the reasons for his failure to report or to provide notification but did not do so.

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.

871 IAC 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.

For the reasons stated herein, the administrative law judge concludes the claimant's discharge was for misconduct in connection with his employment. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated October 15, 2008, reference 02, is affirmed as modified. The claimant was discharged for misconduct. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times the claimant's weekly benefit amount, provided that he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs