

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

BRET J BAIN
101 W MADISON
NEW LONDON IA 52645

MILLARD REFRIGERATED SERVICES INC
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-000

Appeal Number: 06A-UI-01562-SWT
OC: 01/01/06 R: 04
Claimant: Respondent (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge
Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 3, 2006, reference 04, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on February 27, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. Todd Roger participated in the hearing on behalf of the employer. Exhibit A was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a warehouse worker from August 22, 2005, to December 15, 2005. In mid-December 2005, the claimant was having problems with his left knee. It was painful and swollen. The claimant went to the doctor's office on December 16, 2005. The claimant was diagnosed with damage to his anterior cruciate ligament. The

claimant reported to work on December 16 with a doctor's excuse explaining the diagnosis and restricting the claimant to light-duty work lifting of no more than 20 pounds, which was a regular part of the claimant's job. On December 16, 2005, the manager told the claimant that there was no light-duty work available and that he could take a leave without pay or be let go and draw unemployment insurance benefits.

The claimant decided that he could not afford to be off work. He returned to the doctor's office on December 27, 2005, and obtained a statement from the doctor's office releasing him to return to work without restrictions. He presented this to his supervisor on December 27. He was told that the employees were not working that day and he should come back on December 28. When he reported to work on December 28, he was informed that his employment had been terminated by the general manager. The claimant tried to get the general manager to change his mind, but the decision was not changed.

The employer discharged the claimant because it believed that he was not able to fully perform his job. As of December 27, 2005, the claimant had been released to work by a medical professional with no restrictions.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. The preponderance of the evidence establishes that the claimant was let go because the employer believed the claimant was not able to perform his warehouse work.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

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 evidence fails to establish any misconduct on the part of the claimant. He was discharged because the employer considered him to be unable to fully perform his job, which does not meet the definition of misconduct.

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code Section 96.4-3. As of December 27, 2005, the claimant had been released to work by a medical professional with no restrictions. The evidence establishes he was able to and available for work.

DECISION:

The unemployment insurance decision dated February 3, 2006, reference 04, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/s