

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 – EI

**KEVIN OLSON**  
Claimant

**APPEAL NO. 110-UI-13161-WT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AGRI DRAIN CORP**  
Employer

**OC: 06/19/11  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a fact-finding decision dated July 26, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 25, 2011. The hearing was held without the presence of claimant's attorney from Legal Aid. The Administrative Law Judge upheld the disqualification on August 25, 2011. Claimant's attorney appealed to the Employment Appeal Board. On October 5, 2011, the Board held that the agency erred in failing to allow the claimant's attorney to participate. The matter was remanded to the Appeals Bureau and a new hearing was scheduled for and held on October 31, 2011. Claimant participated through attorney Joseph Basque. Employer participated by Kris Stringham. Employer Exhibit A and Claimant Exhibits 1-2 were admitted into evidence. The hearing was conducted de novo with no weight given to the previous hearing which had been held on August 25, 2011.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds as follows. Claimant began working for the employer on September 7, 2010. He was a full-time assembler/welder. Claimant was discharged on June 16, 2011 by employer because he failed to return to work from a leave of absence on June 11, 2011.

Mr. Olson had been granted a leave of absence for a personal medical problem which began toward the end of March 2011. On March 31, 2011, H.R. Generalist Kris Stringham, sent Mr. Olson a letter outlining the terms of his leave of absence. (Emp. Ex. A). He was instructed to complete their forms and report his status to the employer on the 1st and 15th of each month. From April to May, Mr. Olson substantially complied with this directive. He did not call in exactly on the 1st or 15th of each month, but he maintained reasonable contact with the employer by calling the number and leaving messages for Kris Stringham. The employer never warned or contacted the claimant that he was not complying with the directive.

On June 16, Kris Stringham terminated Mr. Olson. (Emp. Ex. A, p. 2). She determined that Mr. Olson's leave should have ended on June 11, 2011, because that is when his short-term disability expired.

**REASONING AND CONCLUSIONS OF LAW:**

At the outset, it should be noted that the employer considered this separation to be a voluntary quite under Iowa Administrative Code 871 section 24.25(4). That section states that, the worker is deemed to have initiated the separation if the "claimant was absent for three days without giving notice to employer in violation of company rule." Id.

In this case, the employer determined, with no notice to the claimant, that the date he should have returned to work was June 11, 2011. (Emp. Ex. A, p. 2). This date is found to be arbitrary and without any basis in the record. The claimant did not know that this date had any significance. Had the employer notified the claimant of this date in writing, the outcome of this case would be different. Instead, the employer chose a date that the claimant was expected to return to work, did not provide notice of said date to the claimant and then terminated him without prior contact. Under these circumstances, this employment separation cannot be viewed as a quit, but rather, must be viewed as a separation initiated by the employer. Therefore, unless the employer can demonstrate work-related misconduct, the claimant is eligible for benefits.

Iowa Code § 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

871 IAC 24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct. The employer's primary argument is that the claimant did not maintain contact with the employer as outlined in a letter dated March 31, 2011. (Emp. Ex. A, p. 1). The claimant was directed to contact Human Resources on the 1st and 15th of each month. The claimant did not do this. The claimant, however, did maintain reasonable contact with the employer. During all of the claimant's conversations with the employer, the employer never warned the claimant verbally or in writing. The claimant's wife contacted the employer in late May 2011. Ms. Olson told Ms. Stringham that her husband was attempting to get the doctor to release him back to work earlier than originally anticipated. At that time, the employer did not indicate that the claimant's job was in jeopardy, nor that he needed to be back at work on June 11, 2011. The employer gave no warnings to the claimant about his failure to strictly adhere to the directives contained in their letter of March 31, 2011. Again, had it done so, the outcome likely would be different. The claimant was simply not on notice that he would be terminated for this type of conduct. In the facts presented to the undersigned, however, there is no misconduct shown. The claimant is entitled to benefits so long as he is otherwise qualified.

**DECISION:**

The fact-finding decision dated July 26, 2011, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

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Joseph L. Walsh  
Administrative Law Judge

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Decision Dated and Mailed

jlw/pjs

