

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRAVIS L PHIPPS**

Claimant

**APPEAL NO. 10A-UI-09055-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GARNEY COMPANY INC**

Employer

**OC: 05/09/10**

**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Employer filed a timely appeal from a representative's decision dated June 17, 2010, reference 01, which held claimant eligible to receive unemployment insurance benefits. After due notice, a telephone hearing was held on August 11, 2010. Claimant participated personally. Participating as a witness for the claimant was Curt Norby, fellow employee. The employer participated by Mr. Tom Eden, Project Manager.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Travis Phipps was employed by Garney Construction Company from June 21, 2009 until May 12, 2010 when he was discharged from employment. Mr. Phipps worked as a full-time concrete finisher and was paid by the hour. His immediate supervisor was Bob Ackerd.

Mr. Phipps was discharged after the employer believed that he had not provided sufficient notice of his absences and did not call in on a daily basis. Mr. Phipps had been injured in a non-work-related accident over the weekend proceeding May 3, 2010. Mr. Phipps called in on May 3 at 8:10 a.m. after the beginning of the work shift. The claimant had not called in earlier because he was under the effects of medication given to him for a broken foot which he had sustained during the weekend. Mr. Phipps indicated to his immediate supervisor that he had suffered an injury over the weekend and had been taken off work by a doctor's note. Claimant was informed by his supervisor to call the following week. Mr. Phipps had a fellow worker attempt to deliver a doctor's note to the employer as the claimant felt it was unsafe because he was on crutches and the work area leading to the construction trailer was muddy and uneven. The employer would not accept the doctor's statement as it was not being delivered personally by Mr. Phipps. Subsequently when Mr. Phipps informed the company that he would be fully released and able to return to work the following week, the claimant was referred to the project

manager, Mr. Eden, who informed the claimant that he had been discharged based upon providing inadequate notice.

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

The question is whether the evidence establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. of Appeals 1992).

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.

The evidence in the record establishes that Mr. Phipps was injured in a non-work-related incident and unable to report for scheduled work during the period in question. The evidence establishes the claimant notified the employer as soon as possible and that the claimant believed that he was not required to provide a daily notice as he had been taken off work by a doctor's note and had offered to provide the note to the employer. When the claimant informed

the employer of an expected return date, he was informed that he had been discharged as he had provided inadequate notice.

The administrative law judge concludes based upon the totality of the evidence in the record that the claimant reasonably believed that the method of notice that he had provided was adequate under the circumstances of this case. Intentional misconduct sufficient to warrant the denial of unemployment insurance benefits has not been shown. Benefits are allowed, providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated June 17, 2010, reference 01, is affirmed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

pjs/pjs