

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDY W LUTH
Claimant

APPEAL NO. 110-UI-13162-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PACKERS SANITATION SERVICES INC
Employer

**OC: 05/22/11
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Randy Luth (claimant) appealed a representative's July 1, 2011 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Packers Sanitation Services (employer). This administrative law judge issued a decision on August 10, 2011, affirming the representative's decision. A decision of reversal on the timeliness issue and remand was issued by the Employment Appeal Board on October 5, 2011. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 1, 2011. The claimant was represented by Ryan Beattie, attorney at law, and participated personally. The employer participated by Tracy Williams, site manager. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired in April 2010 as a full-time supervisor. The claimant signed for receipt of the employer's handbook. The employer did not issue the claimant any warnings during his employment.

On January 28, 2011, the claimant suffered from a rash. The employer sent the claimant to the employer's physician, but the physician could not diagnose the problem and sent the claimant to the employer's specialist. The claimant saw the specialist on February 15, 2011. The employer's specialist could not diagnose the problem and refused to pay for further medical testing.

On March 1, 2011, the claimant saw his own physician. That physician sent the claimant to a specialist on April 15, 2011. The claimant submitted to testing. On April 15, 2011, the claimant learned he was allergic to the employer-provided boots and gloves. He was restricted from working through April 22, 2011. The claimant could return to work as soon as the employer

provided the claimant with different boots and gloves. The employer never provided the claimant with those items, so the claimant ordered his own. On May 27, 2011, the employer terminated the claimant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer did not provide sufficient evidence of job-related misconduct. The claimant was discharged after absenteeism due to a work-related illness. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's July 1, 2011 decision (reference 01) is reversed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw