

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOE F MCCLEARY**  
Claimant

**APPEAL NO: 10A-UI-05319-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARRINGTON PLACE OF MUSCATINE LLC**  
Employer

**OC: 12/20/09  
Claimant: Appellant (4)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct  
Section 96.4-3 – Able and Available  
871 IAC 24.23(1) – Illness

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated April 1, 2010, reference 05, that held he voluntarily quit without good cause on January 3, 2010, and benefits are denied. A telephone hearing was held on May 26, 2010. The claimant, and his fiancé, Tiffany Howerton, participated. Lisa Schilling, Administrator, and Bill Brokaw, Maintenance Supervisor, participated for the employer.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant worked for the employer as a full-time maintenance/van worker from December 4, 2009 to December 31, 2009. The claimant's fiancée called the employer and left a message on January 2, 2010 that he had a heart attack and was hospitalized. Several days later, the claimant informed the employer he would require open heart surgery, and he would be off work for three or more months.

According to employer policy, the claimant had not worked long enough to qualify for a leave of absence. The employer issued a letter to the claimant on February 12 that he was not eligible for leave, so his employment was terminated with eligibility for application and re-hire.

The claimant has been released by his doctor to return to work without restriction effective June 1, 2010.

**REASONING AND CONCLUSIONS OF LAW:**

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 administrative law judge concludes the employer discharged the claimant for no act of misconduct in connection with employment on February 12, 2010.

While the claimant's separation from employment on January 2, 2010 was due to a non-job-related illness (heart attack), the employer terminated the claimant because he was not eligible for any type of leave of absence. The termination is supported by language in the February 12 letter that he could re-apply for work. Although the employer policy provides that claimant is not eligible for a leave of absence, this circumstance that caused the employer to terminate claimant does not constitute job disqualifying misconduct. In effect, the termination shut the door on any continuing employment relationship, as the employer would not keep the claimant's job open once he recovered.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

The administrative law judge further concludes the claimant is disqualified from receiving benefits from January 3, 2010 to May 29, 2010 due to his heart surgery and recovery.

The administrative law judge further concludes the claimant is eligible for benefits effective May 30, 2010, as his doctor has issued to him an unrestricted release to return to work on June 1st.

**DECISION:**

The department decision dated April 1, 2010, reference 05, is modified. The claimant was not discharged for misconduct on February 12, 2010. The claimant is not eligible for benefits from January 3, 2010 to May 30, 2010, because he was not able and available for work. The claimant is able and available and entitled to benefits effective June 1, 2010.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs