

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD A ALDERMAN
Claimant

APPEAL NO. 16A-UI-09099-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CECO CONCRETE CONSTRUCTION LLC
Employer

OC: 07/24/16
Claimant: Appellant (2)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant, Donald Alderman, filed a timely appeal from a representative's decision dated August 18, 2016, reference 01, which denied unemployment insurance benefits finding that the claimant voluntarily quit work on December 9, 2015 because of a non-work-related illness or injury. After due notice was provided, a telephone hearing was held on September 8, 2016 at which time the claimant participated personally. Participating on behalf of the claimant was Mr. Samuel Aden, Attorney at Law. Although duly notified, the employer did not respond to the notice of hearing and did not participate. Claimant's Exhibits A, B, C, and D were admitted into the hearing record.

ISSUE:

The issue in this matter is whether the claimant was separated from his employment for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant worked for this employer beginning in the year 2015 and until November 30, 2015 when he was injured on the job by falling off a ladder. Mr. Alderman was employed as a full-time laborer for the company and was paid by the hour. His immediate supervisors were Kelly Keister and Mr. Fred Newson.

The claimant believed that his condition was caused by a work-related accident and filed a workers' compensation claim. It appears that the matter is now in litigation.

On November 30, 2015, after he was injured, Mr. Alderman was transported back to the employer to a medical facility of the employer's choice. Mr. Alderman was given medical restrictions limiting his lifting to 20 lbs. and pushing and pulling to a 60-lb limitation and prohibited from frequent walking by the limitations. The claimant attempted to return to work the next day and to provide his employer with the doctor's limitations. Mr. Alderman believed that there were job positions available at the construction site that he could perform within the

doctor's limitations that had been imposed. Upon providing the limitations to his employer at that time, he was told by the superintendent, Mr. Keister, that there was no work for him and he should go home.

Mr. Alderman attempted to return to work again on December 4, 2015 but once again was sent home by the employer and not allowed to work. On January 18, 2016, the claimant received a status report from Iowa Ortho with a lifting restriction of 10 lbs. and limitations that prevented squatting and bending. Once again Mr. Alderman attempted to return to work believing that there were work assignments available to him that fit those limitations, however, he was told by Mr. Keister that there was no work for him and sent home. On January 26, 2016, the claimant was again examined by Iowa Ortho and was given a 5-lb. lifting limitation. Mr. Alderman attempted to return to work believing that there was work available but was told there was no work for him.

Mr. Alderman's medical limitations remained in place until August 30, 2016 when he underwent knee replacement surgery. The claimant testified he was hospitalized but was released and able to perform light duty work in the general field of employment effective the week beginning September 4, 2016. Mr. Alderman has attempted to secure light duty employment since that date.

REASONING AND CONCLUSIONS OF LAW:

The evidence in this matter is clear that Mr. Alderman did not voluntarily quit his employment with Ceco Concrete Construction LLC or indicate in any manner his desire to relinquish his position with the company. Mr. Alderman believed that light duty work was available at the employer's job site and believed that the employer would accommodate his temporary limitations by assigning him to desk work or other light duties until he was fully released by his physician. The claimant's desire to return to work in a light duty capacity was communicated to the employer directly by Mr. Alderman on numerous occasions when he had attempted to return to work but told that there was no work available to him.

In this case Mr. Alderman was actively working for Ceco Concrete Construction LLC but was subsequently precluded from performing all of his normal job duties by a medical condition that the claimant believed was work related. It is the claimant's reasonable belief that the employer had light duty work available for him but the employer refused to allow the claimant to return to that work. Because the claimant had not quit his employment and had attempted to repeatedly to return, it is the claimant's belief that the employer's refusal to allow him to return to work constituted a discharge from employment for no disqualifying reason.

In the case of Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989), the court considered the case of a pregnant certified nursing assistant who went to her employer with a physician's release that limited her to lifting no more than 25 lbs. Ms. Wills filed a claim for benefits because the employer would not let her to return to work because of its policy of never providing light duty work. The court ruled Ms. Wills became unemployed involuntarily and was able to work because the restrictions did not preclude her from performing other jobs that may have been available with the employer or available in the general labor market. The claimant categorized the separation from employment as a termination by the employer that was not disqualifying.

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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

For the reasons stated herein, the administrative law judge concludes that the claimant was discharged by this employer for no disqualifying reason. The evidence in the record also establishes the claimant is able and available for general employment of a light duty nature in the general labor market.

DECISION:

The representative's decision dated August 18, 2016, reference 01, is reversed. Claimant was dismissed under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements each week that he has claimed unemployment insurance benefits.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs