

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JAMES L RAMSEY
Claimant

APPEAL NO. 18A-UI-02307-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DECKER TRUCK LINE INC
Employer

OC: 01/21/18
Claimant: Respondent (1R)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Decker Truck Line (employer) appealed a representative's February 7, 2018, decision (reference 01) that concluded James Ramsey (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 15, 2018. The claimant participated personally. The employer participated by Courtney Bachel, Director of Human Resources, and Andrea Kloberdanz, Health and Benefits Manager. Exhibit D-1 was received into evidence. 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 considered all of the evidence in the record, finds that: The claimant was hired on November 22, 2016, as a full-time driver. He signed for receipt of the employer's handbook when he was hired. The claimant suffered a non-work-related medical condition and requested Family Medical Leave (FMLA). FMLA was granted from October 16, 2017, to January 9, 2018. The claimant kept in contact with the employer throughout his leave.

The claimant had a doctor's appointment scheduled for January 29, 2018, and hoped to be released to return to work. The doctor's office rescheduled the appointment for February 5, 2018. Prior to the appointment, on January 12, 2018, the employer terminated the claimant for not being able and available for work. On February 5, 2018, the claimant was released to return to work without restrictions.

The claimant filed for unemployment insurance benefits with an effective date of January 21, 2018. The employer participated personally at the fact finding interview on February 6, 2018, by Courtney Bachel.

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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The claimant is eligible for unemployment insurance benefits. Issues surrounding separations of employment for medical reasons and subsequent entitlement to unemployment insurance benefits are among the most challenging in unemployment insurance law. The evidence in this case showed that the claimant was unable to return to work until shortly after he had exhausted his FMLA leave. By the time his doctor permitted him to return to full time work on February 5, 2018, he had already been terminated by the employer.

Where an employee did not voluntarily quit but was terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer services pursuant to the subsection d exception of Iowa Code section 96.5(1). *Prairie Ridge Addiction Treatment Services v. Jackson and Employment Appeal Board*, 810 N.W.2d 532 (Iowa Ct. App. 2012). The claimant was separated from his employment by the employer. This is a non-

disqualifying discharge and the claimant is eligible for unemployment insurance benefits provided he meets all other eligibility requirements.

The issue of whether the claimant was able and available for work from January 21, 2018, to February 5, 2018, is remanded for determination.

DECISION:

The representative's February 7, 2018, decision (reference 01) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible. The issue of whether the claimant was able and available for work from January 21, 2018, to February 5, 2018, is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs