

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID A MACOMBER**  
Claimant

**APPEAL NO: 12A-UI-06364-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MILLENNIUM CONCRETE LLC**  
Employer

**OC: 01/01/12**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Nondisqualifying Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's May 23, 2012 determination (reference 02) that disqualified him from receiving benefits and held the employer's account exempt from charge because he voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated in the hearing. The employer did not respond to the hearing notice or participate in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge finds the claimant qualified to receive benefits.

**ISSUE:**

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

In August 2011 the employer hired the claimant to work as a full-time laborer/supervisor. The claimant knew the employer worked all over the country. Before the claimant agreed to work, he told the employer he would accept employment only if the employer assigned him to work in Iowa, Illinois or Missouri. The employer agreed and the claimant started working.

The claimant's last day of work for the employer was November 23, 2011. The employer sent him home for Thanksgiving. The employer told the claimant he would be called when the employer again had work for him to do.

The employer did not contact the claimant about more work until April 25, 2012. The employer then told the claimant he could work on a job in San Antonio, Texas. The claimant declined this work because it was not in one of the three states the employer agreed he could work when the claimant accepted employment.

The claimant established a claim for benefits during the week of January 1, 2012.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. Based on the evidence presented during the hearing, the claimant was laid off from work on November 24, 2011. He did not quit.

Misconduct is:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment,
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The evidence does not establish that the claimant committed work-connected misconduct.

A layoff from work does not amount to work-connected misconduct. When a claimant is laid off work, he is eligible to receive benefits. 871 IAC 24.113(a). As of November 27, 2011, the claimant is qualified to receive benefits.

**DECISION:**

The representative's May 23, 2012 determination (reference 02) is reversed. As of November 24, 2011, the claimant was on a layoff and was told he would be called when the employer again had work for him. The claimant did not quit and the employer did not discharge him for reasons constituting work-connected misconduct. As of November 27, 2011, the claimant is qualified to receive benefits. Based on the claim established the week of January 1, 2012, the employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css