

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOE WILLIAMS JR
Claimant

APPEAL 15A-UI-09397-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHEARERS FOODS BURLINGTON LLC
Employer

**OC: 07/26/15
Claimant: Appellant (5)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 14, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on September 8, 2015. The claimant participated personally. The employer participated through Melissa Stiffler, the human resources generalist. Claimant Exhibits A and B, and Employer Exhibits 1 and 2 were admitted into evidence.

ISSUES:

Did the claimant voluntarily leave the employment with good cause attributable to the employer or did the employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a packer and was separated from employment on August 5, 2015.

The claimant has a history of medical concerns related to his blood pressure, his back, and other matters (Claimant Exhibit A). The claimant was scheduled to have back surgery, which he believed was due to a work-related injury. The claimant did not report the injury to worker's compensation. The claimant's attorney advised the claimant to take active steps if he chose to pursue the worker's compensation (Claimant Exhibit B). At the time of the hearing, the employer had no record of a pending or submitted worker's compensation claim.

The claimant's surgery was repeatedly delayed due to his high blood pressure. The claimant had his surgery on February 9, 2015, and was released with restrictions of light duty. The

claimant could not perform work that involved lifting or standing for periods of time. The claimant believes his restrictions may be lifted in one year and has not currently been released without restrictions from his doctor.

The claimant last performed work on August 4, 2014. He went on a personal medical leave of absence and FMLA, which included thirteen weeks of short-term disability. The claimant was deemed to be "inactive" effective April 3, 2015, based on his failure to return from FMLA and his personal leave of absence (Employer Exhibit 1). The claimant was then advised to notify the employer if his medical condition changed and he was released to return from work. On August 4, 2015, the claimant was informed that based on the employer's policies, he was being "automatically terminated" because he had been on a medical leave for one year (Employer Exhibit 2).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not quit but was discharged from employment for no disqualifying reason.

Iowa Code § 96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

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).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). In this case, the claimant did not have the option of remaining employed nor did he express intent to terminate the employment relationship. Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

When a claimant is discharged, the employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. The evidence does not establish that the claimant intentionally disregarded the employer's interests. Both parties were in an untenable situation because the claimant's delay in surgery (and thereby ability to return to work) was for multiple months due to his personal medical condition of hypertension, and the employer had held the claimant's position open beyond the expiration of FMLA.

However, the claimant did not quit but was discharged by the employer, which places the burden of proof on the employer. It cannot be ignored that the Iowa Employment Security Act was established with the clearly stated intent that unemployment reserves be used "for the benefit of persons unemployed through no fault of their own." Iowa Code § 96.2. In this case,

the claimant's employment did not end due to any disqualifying misconduct on his part. While the employer may have been justified in discharging the claimant, based on its internal policies, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. Therefore, the claimant is eligible for benefits based on the separation.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant as the employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law. Since the employer has not met its burden of proof, benefits are allowed.

However, for the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

Iowa Code § 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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(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 claimant is currently under a doctor's care and has not been released without restrictions. The claimant is only able to perform light-duty work that includes no lifting or standing, and estimates he could be restricted from work for a year following his February 2015 surgery. For these reasons, the claimant is not currently able to or available for work and therefore ineligible for benefits until he receives a medical release from his physician.

DECISION:

The August 14, 2015, (reference 01) decision is modified with no change in effect. The claimant did not quit but was discharged for no disqualifying reason. The claimant is not currently able to and available for work. Benefits are withheld until such time as he obtains a medical release.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/css