

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM E BROWN
Claimant

APPEAL NO: 13A-UI-05714-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SDH SERVICES WEST LLC
Employer

**OC: 03/31/13
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's May 1, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant's employment separation was for nondisqualifying reasons. The claimant participated in the hearing. Paul Brennan, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits as of March 31, 2013.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits, or did the employer discharge him for reasons that constitute work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer in June 2011. The claimant worked as a full-time grill cook. The last day the claimant worked was March 12, 2012.

The claimant had back problems. Initially, the employer gave him a medical leave of absence because he had not worked long enough to receive FMLA. The employer asked the claimant to contact the employer once a week when he was on the leave of absence. For a while, the claimant kept the employer informed about his health and back problems after his medical appointments. In April, the employer advised the claimant he was on FMLA.

The employer sent the claimant a certified letter on July 24 telling him that his FMLA would end in early August. The letter told the claimant that he either needed to come back to work or provide additional information from his doctor so the employer could grant him more time off from work. Even though the employer received information that the certified letter had been signed by someone, the claimant did not report back to work or contact the employer any time after the employer sent the July 24 certified letter.

As a result of the claimant's failure to contact the employer, he was scheduled to work in early August. When the claimant did not call or report to work as scheduled on August 6, 7, and 8, the employer ended his employment. The claimant's physician did not release the claimant to return to work until January 2013.

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.

The claimant's explanation as to why he did not contact the employer after July 2012 does not excuse his failure to keep in contact with the employer. Since the claimant was not released to return to work until January 2013, the evidence does not establish that the claimant voluntarily quit his employment. Instead, the employer initiated the claimant's August employment separation.

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 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).

The law defines misconduct as

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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 employer is commended for working with the claimant's medical situation for over four months. The employer established justifiable business reasons for ending the claimant's employment on August 8 or 9. Since the claimant was still unable to work in August, the evidence does not establish that he committed work-connected misconduct. By the time the claimant was released to work in January 2013, the employer had already ended his employment so it was not necessary for the claimant to contact the employer about returning to work. This does not prevent the claimant from contacting the employer about rehiring him or from the employer contacting the claimant with an offer of work.

Based on the reasons for the claimant's August 2012 employment separation, the claimant is qualified to receive benefits as of March 31, 2013.

DECISION:

The representative's May 1, 2013 determination (reference 01) is affirmed. The claimant's August 2012 employment separation was for nondisqualifying reasons. As of March 31, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css