

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY D GRIGGS

Claimant

APPEAL NO: 110-UI-12399-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHENKER LOGISTICS INC

Employer

OC: 05/22/11

Claimant: Appellant (4/R)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's June 30, 2011 determination (reference 03) 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. A hearing was initially held on July 27, 2011. The claimant did not participate at the July hearing. Based on the administrative record, an administrative law judge issued a decision, 11A-UI-08811-NT, and affirmed the June 30, 2011 determination.

The claimant appealed the 11A-UI-08811-NT decision to the Employment Appeal Board. The Employment Appeal Board remanded this matter to the Appeals Section for a new hearing because the claimant had not received the hearing notice for the July hearing.

Another hearing was scheduled and held on November 1, 2011. The claimant participated at this hearing. The employer did not respond to the hearing notice or participate at the November 1 hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge finds the claimant qualified and eligible to receive benefits as of August 7, 2011.

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:

The claimant started working for the employer in October 2010 as a full time case picker. When the claimant began working, he worked for a temporary employment firm who assigned him to work for the employer. The employer hired him as an employee in February 2011.

The claimant started experiencing problems with his leg or knee. The claimant went to a doctor on May 15. His doctor indicated he could return to work on May 17. The claimant went back to work on May 17, but he experienced so much pain he received permission to leave work early.

The claimant went back to his doctor on May 21. His doctor then restricted him to light-duty work. The employer did not have any light duty work for the claimant.

The claimant's physician would not release him to work without any restrictions until the claimant saw a specialist on August 3, 2011. The employer gave the claimant a leave of absence when he could not perform the job he had been hired to do. After the employer informed the claimant his job could not be held for him until August 3, he returned to work on July 21. On July 21, the claimant went to work but could not work because his knee bothered him too much. The claimant experienced too much knee pain in mid-July to continue working. The employer then told the claimant to contact the temporary employment when he did not have any problems with his knee to see if the employer had any work for him.

After the specialist examined him and corrected his medication, the claimant was released to work on August 3, 2011. The claimant did not have any work restrictions after he saw the specialist.

The claimant established a claim for benefits during the week of May 22, 2011.

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 the employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(1), (2)a. The facts do not establish that the claimant quit his employment on May 22, 2011. Instead, the claimant had light-duty work restrictions and the employer did not have light-duty work for him to do. When the employer did not have light-duty work, the claimant's physician restricted him from working. The employer then granted the claimant a leave of absence. After the employer informed the claimant his job could not be held until August 3, the date of the specialist's appointment, the claimant tried to go back to work on July 21. He experienced too much knee pain to continue working until he saw the specialist. The employer ended the claimant's employment on July 21 when the claimant was unable to work.

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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. 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).

The employer had justifiable business reasons for ending the claimant's employment in late July 2011. The claimant's employment ended because he was unable to or incapable of performing

his job duties. The claimant did not commit work-connected misconduct. Therefore, as of July 24, the claimant is not disqualified from receiving benefits based on the reasons for his July 22 employment separation. Since the claimant was on a leave of absence, May 22 through July 23, 2011, he is not eligible to receive benefits during these weeks. 871 IAC 24.23(10).

An issue of whether he is eligible to receive benefits for the weeks ending July 30 and August 6, before his specialist released him to return to work without any restrictions, will be remanded to the Claims Section to determine. Even if he is not eligible to receive benefits for these two weeks, as of August 7, 2011, he should be eligible to receive benefits. The issue of overpayment for benefits the claimant may have received before July 24 is also remanded to the Claims Section to determine.

DECISION:

The representative's June 30, 2011 determination (reference 03) is modified in the claimant's favor. The claimant did not voluntarily quit his employment. From May 22 through July 23, the claimant was on a leave of absence and is not eligible to receive benefits. The employer ended the claimant's employment the week ending July 23 because he was unable to work and had not been released to work by a specialist. The claimant's employment separation in late July does not disqualify him from receiving benefits because he did not commit work-connected misconduct. The employer's account is subject to charge.

The issue of whether the claimant was able to and available for work and eligible to receive benefits for the weeks ending July 30 and August 6, 2011, is **Remanded** to the Claims Section to determine. Since the claimant was released to work to by his specialist on August 3, he should be eligible to receive benefits no later than the week of August 7, 2011.

The issue of overpayment for benefits the claimant may have received before August 7 is also **Remanded** to the Claims Section. Any overpayment may be offset by benefits the claimant is entitled to receive as of August 7, 2011.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs