

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHEN J BLINKINSOP
Claimant

APPEAL NO: 11A-UI-15343-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EQUISTAR CHEMICALS LP
Employer

**OC: 10/23/11
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 16, 2011 determination (reference 01) that disqualified the claimant from receiving benefits and held the employer's account exempt from charge because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated in the hearing. Ginger Pingel, a human resource representative, 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.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that 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 February 2008. He worked as a full-time operator. The claimant fell down stairs at his home on February 7, 2010. The claimant sprained his ankle and was restricted from working as a result of this injury. The claimant went on short-term disability. The employer's nurse sent the claimant to his family physician to treat the ankle injury and asked the claimant to keep in contact with her after his appointments.

The claimant was in physical therapy and believed his ankle was getting better. He felt he was capable of returning to work and asked the employer about returning to work. When the employer's nurse asked the claimant's supervisor, the claimant learned he could not return to work until he was completely healed and did not have any work restrictions.

While the claimant had physical therapy, a clicking sound developed when he walked. He experienced a shooting pain in his leg when he walked all day. As a result of this symptom, the claimant was advised to see a surgeon. The claimant had surgery in January 2011, but the surgery did not resolve the problem. After the claimant had recovered from the surgery, he still had a clicking sound and pain in his leg. At this time, he was on long-term disability. The

employer's nurse was no longer his contact person. The claimant was advised to keep in contact with Met Life, the insurance carrier for his long-term disability.

The claimant's surgeon did not release the claimant to return to work, even though the claimant believed he was capable of working. The claimant received a letter from Met Life on September 23, 2011, informing him that his long-term disability benefits would stop. About this same time, the claimant learned that when he had not returned to work a year after he went on short-term disability, the employer no longer considered him an employee. The claimant's employment ended for administrative reasons.

The claimant established a claim for benefits during the week of October 23, 2011.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The facts do not establish that the claimant intended to quit his employment. Instead, he was restricted from working by his treating physician after he injured his ankle. A claimant who is on medical leave of absence or short- or long-term disability for medical reasons does not establish that the claimant quit. Instead, the claimant was on short- or long-term disability in an attempt to continue his employment relationship. In this case, the employer initiated the employment separation when the employer removed the claimant's name as an employee after he had been off work for more than a year.

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 established business reasons for ending the claimant's employment relationship. The employer acknowledged the claimant did not commit work-connected misconduct. His employment ended because he was unable to work return to work when his ankle did not completely heal. The claimant did not commit work-connected misconduct. Therefore, as of October 23, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Since the claimant's treating physician and/or surgeon restricted the claimant from working, the claimant must establish that he is able to and available for work before he is eligible to receive

benefits. To make this determination, the issue of whether the claimant is able to and available for work as of October 23, 2011, will be remanded to the Claims Section to investigate and issue written determination. The claimant should provide a doctor's statement to his local workforce office indicating when or if he is released to work and what if any work restrictions he has. The claimant does not have to be 100 percent healed, he only needs to establish what work he is available to do with any work restrictions he may have.

DECISION:

The representative's November 16, 2011, determination (reference 01) is reversed. The claimant did not voluntarily quit his employment. Instead, the employer discharged him for reasons that do not constitute work-connected misconduct. As of October 23, 2011, the claimant is qualified to receive benefits based on the reasons for his employment separation. The employer's account is subject to charge.

The issue of whether the claimant is able to and available for work or what type of work he is available to do as of October 23, 2011, is **Remanded** to the Claims Section to investigate and make this determination. The claimant must provide a doctor's statement to his local Workforce office indicating when his physician and/or treating surgeon released him to work and what, if any, work restrictions he has as of October 23, 2011, and subsequent weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw