

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENNIS G OPPERMAN**  
Claimant

**APPEAL NO: 13A-UI-11416-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FISHER CONTROLS INTERNATIONAL LLC**  
Employer

**OC: 09/08/13**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
871 IAC 24.22(2)j – Leave of Absence

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated September 30, 2013, reference 01, that held the claimant was not discharged for misconduct on June 24, 2013, and benefits are allowed. A telephone hearing was held on November 25, 2013. The claimant's Attorney, Steven Jayne, participated. The employer's Attorney, Charles Cutler, participated for the employer. Claimant Exhibits A, B, C, D & E were received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having considered the stipulation of the evidence and claimant exhibits finds: The claimant was hired on May 21, 1973, and last worked for the employer as a full-time utility operator/maintenance on June 24, 2013. Claimant suffered a job-related injury. The employer received from claimant's doctor, Jones, permanent activity restrictions: He should not engage in repetitive, forceful pinching and grasping with either of the hands. He should avoid repetitive flexion and extension of the wrists. Limit to occasional grasping and pinching with either hand. The employer sent claimant home on June 24 due to these restrictions.

The employer HR director sent claimant a letter on July 29 that his doctor imposed permanent work restrictions that prohibit his ability to work as a utility operator maintenance with or without accommodation, and any other job position for the employer. The employer placed claimant on medical leave status pending any change in the restrictions.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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.

871 IAC 24.22(2)j(1)(2)(3) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on June 24, 2013.

The law requires a leave of absence must be by consent of the parties to constitute a voluntary period of unemployment. The evidence does not show claimant consented to the medical leave but was placed on it unilaterally by the employer.

Since the employer knew (on June 24) claimant was put on permanent work restrictions with a likelihood he would not recover (as of July 29), its action to put claimant on medical leave is an involuntary employment separation that is a discharge for no misconduct.

**DECISION:**

The department decision dated September 30, 2013, reference 01, is affirmed. The claimant was discharged for no misconduct on June 24, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs