

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDALL D SEYMOUR
Claimant

APPEAL NO: 13A-UI-02654-S

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE SHERWIN-WILLIAMS CO
Employer

OC: 01/27/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct

STATEMENT OF THE CASE:

The claimant appealed a department decision dated February 28, 2013, reference 01, that held he voluntarily quit because of non-work related illness or injury on June 30, 2012, and benefits are denied. A hearing was held on April 30, 2013. The claimant, and Attorney, Nathaniel Boulton, participated. The employer elected not to participate. Employer Exhibit One was received as evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds: The claimant began employment on August 7, 2006, and last worked for the employer as a part-time warehouse driver on February 1, 2012. He received a back injury and was on a medical leave that expired May 10, 2012. The employer sent him a July 30, 2012 letter he had exhausted his leave and had been replaced by another employee.

The employer representative submitted a letter it is not contesting claimant's unemployment.

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 24.32(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.

The administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on July 30, 2012. The employer failed to participate in this hearing and offer evidence of job disqualifying misconduct.

DECISION:

The department decision dated February 28, 2013, reference 01, is reversed. The claimant was not discharged for misconduct on July 30, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs