

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELVIN O JOHNSON
Claimant

APPEAL NO. 10A-UI-00646-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

LAMCO LTD
Employer

**Original Claim: 12/06/09
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer appealed a department decision dated January 5, 2010, reference 01, that held the claimant was not discharged for misconduct on November 18, 2009, and that allowed benefits. A telephone hearing was held on February 23, 2010. The claimant, Dale Putnam, attorney at law, and Robert Lemke, witness/brother-in-law, participated. Brian Lammers, Owner; Laura Hammel, Office Manager; and Cindy Oberfoel, Assistant Dispatcher, participated for the employer. Claimant Exhibits One and Two were 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 testimony of the witnesses and having considered the evidence in the record, finds: The claimant began work as a full-time over-the-road truck driver on January 13, 2009, and last worked for the employer on or about November 18, 2009. The claimant provided assistance to a truck driver during an accident that occurred in Indiana on October 21, 2009. The claimant was not directly involved in the accident though he helped the other driver out of his truck. When the claimant came into work, he told his office manager about it and showed pictures of what happened.

The claimant reported to the employer on November 21 that he had a serious health issue, he could not drive, and he was going to see his doctor. Later, the employer requested he produce a doctor's statement that he could return to work without restrictions or limitations.

On December 1, the claimant provided a doctor's statement from his physician, Dr. Perkins, to the employer that he could return to work on December 5. The claimant gave his medical history to the doctor, which disclosed he was a truck driver. The employer did not accept it, but of a lack of information. The claimant was requested to provide a detailed doctor's statement that identified the physician, location of treatment, whether he could return to work with any restrictions or limitations, whether the doctor understood his was a D.O.T. truck driver, and

whether the doctor had examined an MRI test result. The claimant was seen by Doctor Perkins on December 2, and a second doctor's statement was faxed to the employer that confirmed claimant was released to return to work. The employer contacted Dr. Perkins, as it questioned whether he knew claimant was a D.O.T. driver and whether he examined the MRI test result. Dr. Perkins acknowledged his review of the MRI, but he could not provide an further medical information without a claimant release.

The employer called the claimant on December 3 and demanded a full medical release of information. The claimant declined, and he advised that he was going to file a workers' compensation claim, as he believed his injury was job related. The employer discharged the claimant for failing to provide medical release to return to work statement with the information requested.

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 that the claimant was discharged for misconduct in connection with employment on December 23, 2009.

The claimant provided two medical statements to the employer that he had an unrestricted release to return to work from his physician. The employer confirmed with claimant's doctor that he had reviewed the MRI test result, which complied with the employer requests related to the

medical release. The only other matter is whether the doctor knew the claimant was a D.O.T. driver, which was given by the claimant as part of his medical history.

The employer discharged the claimant on December 3 for his refusal to provide a full medical release, which is an unreasonable request and beyond the scope of what employer required in allowing the claimant to come back to work. It was not misconduct for the claimant to refuse. If the employer had any medical issue with the claimant about returning to work, it could have requested he be seen by an employer designated physician at employer expense.

DECISION:

The department decision dated January 5, 2010, reference 01, is affirmed. The claimant was not discharged for misconduct on December 3, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw