

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CORRY G LONG

Claimant

APPEAL NO: 13A-UI-05893-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 04/21/13

Claimant: Appellant (4)

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.4(3) – Able to and Available for Work

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's May 9, 2013 determination (reference 01) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated in the hearing. Will Sager, the complex human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not eligible to receive benefits because a doctor has not released him to return to work, but the reasons for his employment separation do not disqualify him from receiving benefits.

ISSUES:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

Is the claimant able to and available for work?

FINDINGS OF FACT:

The claimant started working for the employer in March 2008. The last day the claimant worked was March 12, 2013. On March 14, the claimant went to the emergency room for problems with his shoulder. A doctor gave the claimant a work restriction that he was not to work for five days. The claimant gave this restriction to the employer. The claimant understood he was not to return to work until March 20. The employer gave the claimant a temporary leave of absence from March 13 to 19.

When the claimant contacted the doctor to see if he would be released to return to work, the claimant learned he was being referred to a neurologist in Sioux Falls, South Dakota. This appointment was not until June. The claimant then started calling the employer to report he was unable to work.

The employer needed medical documentation to extend the claimant's leave of absence. The employer sent the claimant two certified letters, one on March 26 and the other on April 15, 2013. Both letters asked the claimant to provide the employer with updated medical information so his medical leave of absence could be extended.

When the claimant did not respond to the first letter, the April 15 letter told the claimant that within five days of receiving of the letter he had to contact the employer or his employment would end. The claimant received the April 15 letter on April 17.

The employer talked to the claimant on April 23. By April 23, the employer had already terminated the claimant and told him this. The claimant had to contact employer by April 22. As of April 23, the claimant did not have any additional medical information to give to the employer. The claimant told the employer about the appointment with a specialist. As of June 24, the claimant has not seen the specialist and no doctor has released him to return to work.

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 an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The evidence does not establish that the claimant quit. Instead, a doctor restricted him from work as of March 14 and the claimant has not been released to return to work as of June 24.

The employer initiated the employment separation when the claimant contacted the employer one day late and still did not have any more medical documentation to give the employer. 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).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

While the claimant should have informed the employer he had been referred to a specialist and the date of his appointment, his failure to do so amounts to a good faith error in judgment. The facts do not establish that the claimant intentionally disregarded the employer's interests. The claimant did not commit work-connected misconduct, especially when he was not released to return to work and contacted the employer one day past the employer's deadline. Based on the reasons for his employment separation, the claimant is not disqualified from receiving benefits.

Since the claimant has not been released to work after he was restricted, the law presumes that he is not available for work. 871 IAC 24.23(6). Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4(3). As of April 21, 2013, the claimant is not eligible to receive benefits because he has not been released to work by a doctor.

DECISION:

The representative's May 9, 2013 determination (reference 01) is modified in the claimant's favor. The claimant did not voluntarily quit his employment. Instead, the employer discharged him for justifiable business reasons on April 23, 2013, but the claimant did not commit work-connected misconduct. Based on the reasons for his employment separation, the claimant is not disqualified from receiving benefits. The employer's account may be charged.

The claimant is not eligible to receive benefits as of April 21, 2013, because he has not established that he is able to and available for work. The claimant remains ineligible until he establishes that a doctor has released him to work.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs