

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KEVIN L ANDERSON**  
Claimant

**APPEAL NO: 12A-UI-08323-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ENVIRONMENTAL MANAGEMENT  
SERVICES INC**  
Employer

**OC: 06/03/12  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a - Discharge

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's June 29, 2012 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. Kelly Konger, the owner, appeared on the employer's behalf. During the hearing Claimant Exhibits A and B were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds that based on the reasons for his employment separation, the claimant is qualified to receive benefits.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer in May 2009. He worked as a full time laborer, hazmat technician. On March 10, 2012, when the claimant was not working, he injured himself. After trying a conservative method of treatment, the claimant ended up having neck surgery to correct the medical issues caused by his March 10 injury.

On March 22, the claimant told the employer he was going to have neck surgery and he could be off for six weeks to three months. Since the claimant was not injured at work, the employer indicated that the employer could not guarantee the claimant a job when he was released to return to work. The employer has less than 30 employees. The claimant had neck surgery on March 23.

About a week after his surgery, the claimant talked to Konger. The employer then understood the claimant would have a six-week check up on May 2. At that time, the claimant would have a better idea of when his doctor would release him to work. About a week later, the claimant's doctor talked to Konger. The doctor told the employer that the claimant could be off work two to

three months. The claimant's doctor asked if the employer had any light-duty work for the claimant to do before he was released without any restrictions. The employer did not have light-duty work for the claimant.

The employer expected the claimant to contact Konger after his May 2 doctor's appointment. When the claimant did not contact the employer after May 2, the employer did not know if the claimant had been released to work or not. The employer had paid the employer's share of the claimant's health insurance in March, April, and May. Since the employer did not know when the claimant would be released or if he even planned to return to work, on May 23 the employer sent the claimant a letter informing him he was terminated and how much money the claimant owed the employer. (Claimant Exhibit B.)

The claimant understood the employer had given him time off until he was released to work. When he received the May 23 termination letter, he was shocked. The claimant did not contact the employer because the employer discharged him in the May 23 letter. The claimant's physician released him to return to work without any restrictions on June 25, 2012. (Claimant Exhibit A.)

#### **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 establishes the employer discharged the claimant on May 23, 2012.

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).

The claimant had surgery to correct medical issues from a non-work-related injury. He talked to the employer about his neck surgery and understood the employer would work with him until he was released to work. As of May 2, the employer still considered the claimant an employee.

Even though the claimant's doctor talked to the employer in mid-April and told the employer it could take the claimant until late June to be released to work, the employer expected the claimant to contact him after his May 2 checkup appointment. The claimant used poor judgment when he did not again contact the employment between May 2 and 23. But, he understood the employer knew or realized he was not able to work without any restrictions until the end of June.

The facts establish the employer discharged the claimant because communication between the employer and claimant broke down. Both made parties made incorrect assumptions. Also, the employer did not want to pay the claimant's health insurance benefits if the claimant was not coming back to work soon. As of May 23, the employer discharged the claimant for justifiable business reasons. The claimant did not intentionally disregard the employer's interests. He was not released to work until June 25 and he assumed that after his physician talked to employer, the employer realized the claimant was unable to work until late June. The claimant did not commit work-connected misconduct. Therefore, as of May 23, 2012, the claimant is qualified to receive benefits, if he meets all other eligibility requirements.

**DECISION:**

The representative's June 29, 2012, determination (reference 01) is reversed. The claimant did not voluntarily quit his employment. Instead, the employer discharged him on May 23, 2012, for business reasons. While the employer had justifiable business reasons for discharging him, the claimant did not commit work-connected misconduct. As of May 23, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw