

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NORMAN WATERS
Claimant

APPEAL NO. 17A-UI-05721-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

VON MAUR INC
Employer

OC: 05/07/17
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Norman Waters (claimant) appealed a representative's May 30, 2017, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Von Maur (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 16, 2017. The claimant participated personally. The employer participated by Dawn Shaw, Human Resources Manager.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on November 6, 2016, as a full-time e-commerce associate. He was injured in a stabbing on March 25, 2017, and his physician believed he could not return to until September 2017. The claimant requested a leave of absence through May 19, 2017, when his leave was exhausted. On April 28, 2017, the employer talked with the claimant about his return to work after the leave expired. The claimant's circumstances had not changed and he his projected return was still September 2017. The employer encouraged the claimant to reapply for work when he was released by his physician. The claimant did not return to work on May 20, 2017. He has not been released to return to work by his physician.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Issues surrounding separations of employment for medical reasons and subsequent entitlement to unemployment insurance benefits are among the most challenging in unemployment insurance law. Iowa law requires that there be an intent on the part of the claimant to quit and an overt act that shows that intent. The claimant was separated from his employment by the employer. This is not a voluntary quit. Rather it is a non-disqualifying discharge and the claimant is eligible for unemployment insurance benefits provided he meets all other eligibility requirements.

Where an employee did not voluntarily quit but was terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer services pursuant to the subsection d exception of Iowa Code section 96.5(1). *Prairie Ridge Addiction Treatment Services v. Jackson and Employment Appeal Board*, 810 N.W.2d 532 (Iowa Ct. App. 2012). The evidence in this case showed that the claimant is unable to return to work due to his injuries. The employer separated the claimant because he was unable to return to work. The employer did not provide any evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's May 30, 2017, decision (reference 01) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs