

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN H BOOTH**  
Claimant

**APPEAL NO. 08A-UI-05041-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VAN DIEST SUPPLY CO**  
Employer

**OC: 04-13-08 R: 02  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 23, 2008, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on June 11, 2008. The claimant did participate. The employer did participate through Carolyn Cross, Personnel Manager. Employer's Exhibit One was received. Claimant's Exhibit A was received.

**ISSUE:**

Was the claimant discharged for work related misconduct?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a semi- truck driver, full-time, beginning January 4, 2007, through April 1, 2008, when he was discharged.

The claimant sustained a non-work-related injury to the tendon in his right hand on December 31, 2007. He was off work under a doctor's care and received work restrictions. The employer does not allow an employee to return to work unless the employee is able to return to work without restrictions. The claimant currently has work restrictions that include no lifting over twenty-five pounds and no driving a manual transmission or stick shift truck. The claimant's job requires that he be able to lift 100 pounds and that he be able to drive a manual transmission or stick shift trucks. The claimant has been off work since December 31, 2007, with the exception of two days when he attended driver's meetings. The claimant's FMLA leave expired on April 1, and since he was unable to return to work at that time without work restrictions, the employer discharged him.

The claimant is currently working part-time within his work restrictions at a Fairway store.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Employment Appeal Board*, 423 N.W.2d 211 (Iowa App. 1988).

The claimant had no intention of leaving his job. It is beyond his control that his physician has not lifted his work restrictions yet. It is also beyond the claimant's control that he has not yet healed to the point where he can return to work without restriction. In spite of the expiration of the claimant's FMLA leave period, since claimant is still under medical care and has not yet been released to return to work without work restrictions as of the date of separation, no misconduct has been established. An employee's physical inability to return to work without work restrictions is not job connected misconduct. Benefits are allowed, provided claimant is otherwise eligible.

The claimant is currently working part time for another employer, clearly evidencing that he is able to and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The May 23, 2008, reference 02, decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw