

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSH W LAMBERT
Claimant

APPEAL NO. 07A-UI-01657-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

QWEST CORPORATION
Employer

**OC: 01/14/07 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated February 1, 2007, reference 01, that allowed benefits on his separation from Qwest Corporation. After due notice was issued, a hearing was held by telephone conference call on March 5, 2007. Mr. Lambert participated personally. Participating on behalf of the employer was Mr. Ed McNulty, representative, and witness Greg Duncan and Tanya Michael.

ISSUE:

At issue in this matter is whether the claimant was discharged for misconduct in connection with his work and whether the claimant has been overpaid unemployment insurance benefits.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Lambert was employed by Qwest Corporation from April 25, 2005, until January 11, 2007, when he was discharged from employment. The claimant held the position of center sales and service associate. He was employed on a full-time basis and was paid by the hour. His immediate supervisor was Ms. Michael. The claimant was discharged after he failed to respond to a letter directing him to report back to work effective January 9, 2007. Mr. Lambert had been off work for a substantial period of time beginning December 2006 and was under the care of a psychiatrist. Although the company normally expects employees to call in each day to report impending absences, the claimant had been directed to the company's disability services provider with respects until the claimant's requests for leaves of absences and other factors related to his medical condition and employment with the Qwest Corporation. Mr. Lambert had been instructed by a representative of that service provider that the claimant did not need to call in each day and that the disability services provider was in the progress of attempting to secure the claimant a family medical leave or a medical leave of absence.

When contacted by his supervisor on January 8, 2007, regarding reporting back to work, Mr. Lambert e-mailed his supervisor, indicating in effect that the claimant believed that everything was "okay with Qwest's disability services." The employer interpreted this statement to indicate that the claimant was promising to return to work. When the claimant did not do so, he was sent a termination letter dated January 11, 2007.

Mr. Lambert did not return to work, it appeared, because he continued to think that the matter was being handled by Qwest's disability services, the entity that the claimant had been directed by his employer to handle any issues relative to disability, illness, absences, and related matters. Mr. Lambert also believed that he had not been authorized to return to work on January 9 or January 10, 2007, as his medications had not been regulated and he had previously been advised by his psychiatrist not to return to work under those conditions.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge, after reviewing the evidence in the record and considering the matter at length, is of the opinion that the employer has been unable to sustain its burden of proof in establishing intentional disqualifying misconduct on the part of the claimant. Although the administrative law judge is cognizant that the conduct and statements of Mr. Lambert at times lend the appearance of an individual who may be using circumstances to his own advantage, the administrative law judge nevertheless finds that there are enough conflicting factors in this case that lend some credibility to the claimant's actions and statements.

In this case, the evidence establishes that Mr. Lambert was off work due to a psychiatric condition and under the care of a licensed psychiatrist. The claimant had properly reported absences in the past but was referred to the company's "Qwest disability services provider" and the claimant was instructed to follow the directives given to him by that provider. The evidence is uncontradicted that Mr. Lambert was told that he need not call in each day and that the claimant was led to the reasonable conclusion that the company was working its way toward granting either a family medical leave or a medical leave of absence. A letter was sent by the company on January 8, 2007, instructing the claimant to return to work. However, the claimant did not receive the letter until after his discharge. In the interim, the claimant spoke with his supervisor and e-mailed the supervisor the following day a statement referencing his belief that "all was okay" with Qwest disability services. Based upon conflicting instructions from his employer and their medical provider, and the claimant's perception that he was not required to call in each day and that his continuing absence was in effect approved, the claimant's failure to report did not rise in this case to intentional disqualifying misconduct.

While the management decision to terminate Mr. Lambert may have been a sound decision from a business viewpoint, for the above-stated reasons the administrative law judge finds that disqualifying conduct has not been established.

DECISION:

The representative's decision dated February 1, 2007, reference 01, is affirmed. The claimant was discharged under non-disqualifying conditions and is eligible for benefits, provided that he meets all other eligibility requirements of the law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw