

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN A CARPENTER
Claimant

APPEAL NO. 07A-UI-07552-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMPUTECH INC
Employer

**OC: 07/01/07 R: 02
Claimant: Respondent (5)**

Section 96.5-1-a – Discharge
Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

Temputech, Inc. (employer) appealed a representative's August 1, 2007 decision (reference 01) that concluded Shawn A. Carpenter (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the employer did not have a job for the claimant when his leave of absence ended. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 22, 2007. The claimant participated in the hearing with a witness, Kathy Manatt, his mother. Lynn McMaster, the office manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance 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 early September 2006. The claimant worked as a technician installing safety monitoring systems. On May 2, 2007, the owner learned the claimant and two other employees had positive drug tests. The owner gave the three employees 30 days to provide the employer with a negative or clean drug test.

On May 5, the claimant broke his neck when he was not at work. The employer granted the claimant a medical leave of absence until June 18, 2007. The claimant understood that after his doctor released him to return to work, he needed to have a negative drug test before the employer would allow him to return to work.

On June 18, the claimant's physician released the claimant to return to light-duty work. The claimant's work restriction did not allow him to perform his regular job duties. The employer could not accommodate the claimant's light-duty work restrictions. The claimant then requested another six weeks off from work so he could recover from his off-duty injury. Initially, the claimant understood the employer would give him another six weeks off from work.

On June 25, the claimant learned he no longer had a job because he could not perform the essential functions of his job when his medical leave of absence ended on June 18, 2007. The employer, a small company, needed to hire someone to work in the claimant's position. The employer did not have any light-duty work for the claimant to do.

The claimant established a claim for unemployment insurance benefits during the week of July 1, 2007. As of July 1, 2007, the claimant was not able to perform his job duties for the employer. The claimant could not climb or carry equipment around his neck. The claimant was, however, able to and available to work as a hotel desk clerk and as a housekeeper. The claimant has work experience in both these professions.

REASONING AND CONCLUSIONS OF LAW:

Three provisions of the unemployment insurance law disqualify claimants until they have been reemployed and have been paid wages for insured work equal to ten times their weekly benefit amount. An individual is subject to such a disqualification if the individual (1) is discharged for work-connected misconduct (Iowa Code § 96.5-2-a), (2) fails to accept suitable work without good cause (Iowa Code § 96.5-3), or (3) "has left work voluntarily without good cause attributable to the individual's employer." (Iowa Code § 96.5-1). The facts establish the claimant had no intention of quitting his employment. The claimant did not quit his employment.

The evidence establishes the employer initiated the employment separation on June 25, 2007. The employer asserted the claimant's employment did not continue for two reasons: no negative drug test results submitted by June 18 and the employer did not have light-duty work for the claimant to do. The evidence indicates that if the claimant had been released to return to work without any work restrictions, the claimant would then have taken a drug test. Since it is not known what the test would have revealed, the facts establish the employer terminated the claimant's employment because he was not capable of performing his job as of June 18, 2007, and the employer needed an employee to install safety monitoring systems.

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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

As of June 25, the claimant was unable to perform his job for the employer. Based on business needs the employer had no choice but to end the claimant's employment. For unemployment insurance purposes, the claimant did not commit work-connected misconduct. As of July 1, 2007, the claimant is qualified to receive unemployment insurance benefits.

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4-3. The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work, just not work that required him to climb ladders or carry equipment around his neck. There is work available in the labor market meeting such restrictions that the claimant is qualified to perform, and the claimant has been activity looking for such work in compliance with the requirements of the law. The claimant established he is able to and available for work as of July 1, 2007.

DECISION:

The representative's August 1, 2007 decision (reference 01) is modified but the modification has no legal consequence. The employer discharged the claimant on June 25, 2007, for business reasons that do not constitute work-connected misconduct. As of July 1, 2007, the claimant is qualified to receive unemployment insurance benefits. The claimant established he is able to and available for work as of July 1, 2007. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css