

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRADLEY J FARNSWORTH
Claimant

BEMIS COMPANY INC
Employer

APPEAL 19A-UI-02361-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/21/18
Claimant: Appellant (4)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 13, 2019, (reference 03) unemployment insurance decision that denied benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on April 3, 2019. Claimant participated. Employer did not register for the hearing and did not participate.

ISSUES:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Is the claimant able to work and available for work effective October 21, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in July 2016. Claimant last worked as a full-time quality assurance specialist. Claimant was separated from employment on February 13, 2019, when he was terminated.

Claimant was in a non-work related accident on April 27, 2018. Complaint broke his back, ribs, breastbone, and shattered his leg.

Claimant requested and was approved for medical leave.

Claimant's Family and Medical Leave Act (FMLA) leave expired on July 15, 2018. Claimant's short term disability benefits expired on October 23, 2018. Employer extended claimant's leave of absence to allow more time for healing.

By February 6, 2019, claimant still had restrictions limiting him from sitting or standing for more than five minutes and prohibiting him from lifting more than 10 pounds. In order to return to work as quality assurance specialist, claimant needs to be able to stand and walk and lift more than ten pounds.

On February 13, 2019, employer sent claimant a letter stating it was unable to further extend his medical leave and terminating his employment.

On March 13, 2019, claimant's doctor altered claimant's restrictions to allow him to perform sedentary work.

Claimant is looking for remote or office work. Claimant has two years of experience working as a dispatcher and is looking for that type of work.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether claimant resigned or was discharged by employer. The employer has the burden to establish the separation was a voluntary quitting of employment rather than a discharge. Iowa Code § 96.6(2). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). In this case, claimant did not take any action to end his employment. Instead, employer notified claimant it was ending his employment. Claimant was discharged.

The second issue is whether claimant was discharged for job-related misconduct.

Iowa Code § 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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).

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 Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, employer terminated claimant after he exhausted his medical leave and because it did not have work available to accommodate his restrictions. This is not misconduct and therefore claimant's separation from employment is not disqualifying.

The final issue is whether claimant is able to and available for work.

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that the individual is able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4(3).

To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1).

It is claimant's burden to establish he is able to and available for work. Iowa Admin. Code r. 871-24.22.

Claimant did not establish he was able to perform work in gainful employment from February 13 until March 13, 2019, when he was restricted from sitting or standing for more than five minutes.

On March 13, 2019, claimant's doctor released him to perform sedentary work and claimant has been applying for those types of positions. Claimant has experience working as a dispatcher and is applying for similar types of work, which is sedentary and complies with his restrictions. Claimant has established he is able to work effective March 13, 2019.

DECISION:

The March 13, 2019, (reference 03) unemployment insurance decision is modified in favor of appellant. Claimant was separated for no disqualifying reason. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements. Claimant was not able to and available for work prior to March 13, 2019, and is denied benefits up until that date. Claimant is able to and available for work effective March 13, 2019, and is eligible for benefits thereafter, provided he meets all other eligibility requirements.

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Decision Dated and Mailed

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