

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KIEL J MCMAHON
Claimant

DIAMOND CRYSTAL BRANDS INC
Employer

APPEAL NO: 13A-UI-10702-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/18/13
Claimant: Appellant (2)

Section 96.5-2-a Discharge

STATEMENT OF THE CASE:

The claimant appealed a department decision dated September 11, 2013, reference 01, that held he voluntarily quit without good cause attributable to his employer on August 7, 2013, and benefits are denied. A telephone hearing was held on October 14, 2013. The claimant, and witness, Megan James, participated. The employer submitted documentation received as Exhibit One.

ISSUE:

Whether the claimant voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record finds: The claimant worked for the employer as a full-time material coordinator from June 5, 2006 to July 26, 2013. He was suspended from July 26 to August 2 for attendance issues based on a last chance employment agreement. The claimant did call in on August 5 or 6 that his foot hurt and he would not be to work. He spoke directly to his supervisor on August 7 about his foot hurting and he was told he would be hearing from the employer. He was terminated as a voluntary quit for failing to report his absences on August 5, 6 and 7.

The claimant suffered a foot injury at work about eight months prior to termination and did receive worker's compensation benefits. Claimant paints a pattern of work place harassment leading to his termination that he reported to the employer. The employer submitted written documentation for the hearing.

Claimant is not under a current doctor restriction. There is no able and available for work issue.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

The administrative law judge concludes the employer failed to establish misconduct in discharging claimant on August 7, 2013.

The employer chose not to personally participate in this matter. Claimant and his witness offered testimony he made calls to the employer to report absences on August 5 and 6 due to his foot pain and he spoke directly with a supervisor on August 7. The testimony directly refutes the employer statement he was a no-call no-show to work. Job disqualifying misconduct is not established since the employer treated this matter as a voluntary quit.

DECISION:

The department decision dated September 11, 2013, reference 01, is reversed. The claimant was not discharged for misconduct on August 7, 2013. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs