

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON K BEYER
Claimant

APPEAL NO: 11A-UI-13108-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL STATES ROOFING CO
Employer

OC: 10/03/10
Claimant: Respondent (1)

Iowa Code § 96.4(3) - Able to and Available for Work
Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's October 4, 2011 determination (reference 11) that held the claimant eligible to receive benefits after he established he was medically able to work as of September 25, 2011. The claimant participated in the hearing. Mark Hanson, the president, appeared on the employer's behalf.

Even though an employment separation was not indicated as an issue on the hearing notice, both parties waived their advance legal notice and wanted this issue addressed during the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits as of September 25.

ISSUES:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge the claimant for reasons that constitute work-connected misconduct?

As of September 25, 2011, is the claimant able to and available for work?

FINDINGS OF FACT:

The employer hired the claimant to work as a full-time laborer on July 18, 2011. The claimant stopped reporting to work after August 18 or 19, after he became ill. The claimant called in sick one day and then the employer received a notice of claim informing him the claimant had reopened his claim for unemployment insurance benefits the week of August 14, 2011.

The claimant did not talk to the employer about his illness until August 26. On August 26, the claimant gave the employer a doctor's statement indicating the claimant was unable to work as of August 19. The claimant had not been released to return to work by his doctor by August 26.

The employer had work that needed to be done. The employer told the claimant that when he was released to work, he could contact the employer, but the employer could not guarantee

there would be a job for him because the employer would have to hire another laborer to get the employer's work done.

The claimant's doctor released him to work without any restrictions the week of September 25. The claimant did not contact the employer about returning to work, because when he became ill he had to move. The claimant did not want to return to work for the employer after he was released because the employer was too far from the claimant's new residence.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. When the claimant was unable to work in late August, his employment ended because the employer could not guarantee he would have a job when his doctor released him. The employer's response to the claimant's medical situation was reasonable. For unemployment insurance purposes, the claimant's employment ended on August 26.

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).

The claimant was ill and could not work August 19 through September 25, 2011. Since his employment was not guaranteed until he was released to work by his physician, his employment ended on August 26 for reasons that do not constitute work-connected misconduct. The claimant's employment separation does not disqualify him from receiving benefits.

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4(3). After the claimant's doctor released him to work without any work restrictions on September 25, 2011, the claimant established he was able to and available for work. Therefore, as of September 25, 2011, the claimant is eligible to receive benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's October 4, 2011 determination (reference 11) is affirmed. The claimant's employment ended on August 26, 2011, for reasons that do not disqualify him from receiving benefits. As of September 25, 2011, when the claimant's physician released him to return to work without any work restrictions, he was able to and available for work. As of September 25, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirement. The employer's account will not be charged during the claimant's current benefit year.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css