

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT TREAT
Claimant

APPEAL NO: 12A-UI-10416-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRO RESOURCES INC
Employer

OC: 01-22-12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 24, 2012, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 25, 2012. The claimant participated in the hearing. Ashley Greene, Corporate Administrator, participated in the hearing on behalf of the employer. Employer's Exhibits One through Three were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time general laborer for Pro Resources last assigned to Ashley Industrial Molding from July 16, 2012 to August 2, 2012. His regularly scheduled work hours were 6:30 a.m. to 3:00 p.m. On August 2, 2012, the claimant notified the person whom he believed to be the crew leader that he had a chiropractic appointment at 8:00 a.m. and she said that was fine. While the claimant was attending his appointment, the employer left him a voice mail message stating his employment was terminated for walking off the job and leaving without permission. The claimant returned to Ashley Industrial Molding after his appointment, despite the message, and learned the client did not ask that the claimant not be allowed to return but that the employer made the decision to end the claimant's assignment. The claimant did not have any previous absences, incidents of tardiness, or leaving early and had not received any verbal or written warnings.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

871 IAC 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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The law limits disqualifying misconduct to substantial and 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). 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). While the employer asserts the claimant quit his assignment by walking off the job August 2, 2012, there is no evidence the claimant had any intention of voluntarily leaving his employment. Simply going to a medical appointment he sought permission to attend does not constitute an overt act of voluntarily quitting. The claimant requested time off to go to a medical appointment August 2, 2012, and was granted permission to go by the woman he believed was his crew leader. The claimant had not even worked for this employer or client for one month and did not know he was required to notify both the client and the employer if he needed to leave to attend an appointment. A mere conversation or a verbal warning at most would have sufficed to correct the situation and served to educate a new employee. The claimant was never absent or tardy and had not received a verbal or written warning. The claimant was unaware he had to notify the employer he had an appointment, in addition to telling the client, and his leaving to attend a medical appointment under these circumstances does not constitute disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits are allowed.

DECISION:

The August 24, 2012, reference 03, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css