

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DENNIS J STEIL**  
Claimant

**APPEAL NO. 12A-UI-01994-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DECKER TRUCK LINE INC**  
Employer

**OC: 01/15/12  
Claimant: Respondent (5)**

Section 96.5-2-a – Discharge  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Decker Truck Lines filed a timely appeal from a representative's decision dated February 21, 2012, reference 01, which held the claimant eligible to receive unemployment insurance benefits, finding that he voluntarily quit work on December 19, 2011, due to an injury that was aggravated by his work. After due notice was issued, a telephone hearing was held on March 15, 2012. The claimant participated. Participating on behalf of the claimant was Mr. Marty Elberg, attorney at law. The employer participated by Jenny Smith, attorney at law, and witnesses Andrea Kloberdanz, benefit administrator, and Brenda McNealey, human resource manager. Employer's Exhibits 1 through 20 were received into evidence.

**ISSUES:**

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits and whether the claimant is able and available for work.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Dennis Steil began employment with Decker Truck Line on March 1, 2002, and worked as a full-time shop mechanic. The claimant sustained a work injury on August 26, 2011, when he fell at work. Mr. Steil temporarily returned to work but had difficulty in performing his duties and revisited the workers' compensation physician, as well as his own doctor. Subsequently, there was a dispute as to whether additional medical issues that Mr. Steil was experiencing were work-related. The claimant, however, was determined to be unable to work and unable to return to work by his doctors.

Mr. Steil was offered the opportunity to take Family Medical Leave because of his inability to return to work for medical reasons. Mr. Steil began a medical leave of absence based upon the agreement of the parties. When Mr. Steil continued to be unable to return to work because of his medical condition at the time that the leave of absence expired on December 17, 2011, he was discharged by the employer.

Mr. Steil has not received unemployment insurance benefits. The claimant has not claimed benefits, as he has not been able to work after filing his initial claim.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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 proof in establishing misconduct sufficient to warrant the denial of unemployment insurance benefits. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Conduct that may warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa App. 1992).

The Supreme Court of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984), held that excessive unexcused absenteeism is a form of misconduct. The Court held that the absences must both be excessive and unexcused. The Court further

held that absence due to illness and other excusable reasons are deemed excused if the employee properly notifies the employer. The evidence in the record establishes that the employer was properly notified and was aware at the time of discharge that Mr. Steil was medically unable to return to work. The administrative law judge thus concludes the claimant was discharged by the employer for no disqualifying reason.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

In order to claim unemployment insurance benefits, an individual must be both able and available for work each week that they claim unemployment insurance benefits. The evidence in the record establishes that Mr. Steil has not been able and available for work since filing his claim and is ineligible to receive benefits until he establishes that he is both able and available for work and meets all other eligibility requirements of Iowa law.

**DECISION:**

The representative's decision dated February 21, 2011, reference 01, is affirmed as modified. The portion of the determination finding the claimant is not subject to a benefit disqualification is affirmed. The portion of the determination finding the claimant quit is modified to find that the claimant was discharged for no disqualifying reason. Benefits are allowed when and if the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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