

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LEROY C LITTLE**

Claimant

**UNIPARTS OLSEN INC**

Employer

**APPEAL NO: 12A-UI-03321-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/26/12**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct  
Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated March 29, 2012, reference 01, that held he voluntarily quit without good cause due to a non-job-related illness or injury on October 6, 2011, and benefits are denied. A telephone hearing was held on April 17, 2012. The claimant participated. Stephanie Tuegel, HR Manager, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on February 11, 2005, and last worked for the employer as a full-time CNC operator on October 6, 2011. The claimant received an employee handbook that contained the policies of the employer. The policies contain the leave from work provisions.

Claimant suffered a non-work-related ankle fracture at home and was off work beginning October 6, 2011. He returned to work for one week, January 9 – 15, 2012 and then returned to medical leave.

The employer terminated claimant in a letter dated February 22, 2012 when he exhausted his FMLA and disability after having been off work for 18 weeks since October 20, 2011. The employer did give claimant the option to re-apply when he was able to do the essentials of his job. The claimant had not been released to return to work by his doctor at the time of employment termination.

Claimant received an unrestricted work release by his doctor on March 9, 2012.

## 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.

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 administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on February 22, 2012.

It is not misconduct for the claimant's inability to heal and recover from his non-job-related illness in order to be able to return to work. It is not misconduct to have a medical leave expire without being released to return to work by a doctor. The employer decision to no longer keep claimant's job open is an employment termination though he was given the opportunity to re-apply.

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".

The administrative law judge further concludes claimant is able and available for work as he has been a given a medical release without restriction to return to work on March 9, 2012.

**DECISION:**

The department decision dated March 29, 2012, reference 01, is reversed. The claimant was not discharged for misconduct on February 22, 2012. Claimant is able and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

---

Randy L. Stephenson  
Administrative Law Judge

---

Decision Dated and Mailed

rls/css