

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM E BALLARD
Claimant

APPEAL NO: 13A-UI-07617-S

**ADMINISTRATIVE LAW JUDGE
DECISION**

HOSPICE OF CENTRAL IOWA
Employer

OC: 05/26/13
Claimant: Appellant (4)

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 June 13, 2013, reference 01, that held he voluntarily quit without good cause due to a non-work related illness or injury on May 1, 2013, and benefits are denied. A hearing was held in Des Moines, Iowa on July 29, 2013. The claimant participated. Konny Goff, HR Director, participated for the employer. Claimant Exhibits A, B & C and Employer Exhibit One was received as evidence.

ISSUE:

Whether claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant was hired on May 5, 2008, and last worked for the employer as a full time spiritual care counselor on February 7, 2013. He was required to have an Iowa driver's license as a condition of employment. He was assigned to work from the employer's Osceola, Iowa office, but he would drive to see patients where they lived in multi-county area.

He suffered a heart ailment that caused an issue with his driver's license status. His treating doctor issued a February 7, 2013 statement that claimant was released to work full time on February 8 but he was unable to drive for six months. The employer granted claimant a medical leave of absence from February 8 thru May 1, 2013. It would not allow a non-employee to drive claimant to see its patients because it believed it was a HIPAA violation.

The employer terminated claimant on May 2 because he had exhausted his medical leave period and he was still under a medical restriction that prevented him from driving. The employer needed to replace claimant, and it was not willing to extend the leave period.

Claimant expects the driving restriction will be lifted at the end of the six-month period on August 8. His work search has been limited to Hospice counselor work.

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 employer failed to establish claimant was discharged for misconduct on May 2, 2013.

The employer terminated claimant at the expiration of his medical leave on May 1, 2013 because his ongoing medical restriction precluded him from driving and the employer needed to replace him. Claimant did not voluntarily quit his employment due to health issue though he was under doctor restriction he could not drive.

Claimant committed no act of misconduct that led to his employment termination. His driving privilege was limited due to a health condition that is not misconduct. The employer chose to replace claimant rather than extend his medical leave until his driving restriction was lifted. Job disqualifying misconduct is not established.

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 not currently able and available for work due to his driving restriction and his limiting his job searches to Hospice counselor work.

When claimant's medical restriction to drive is lifted, and he is fully able to return to work whether as a counselor for hospice or other similar position, he should present this proof to the department in order to remove the availability disqualification imposed in this decision.

DECISION:

The department decision dated June 13, 2013, reference 01, is modified. The claimant was not discharged for misconduct on May 2, 2013. Claimant does not meet the availability requirements of the law as of May 26, 2013. Benefits are denied until he provides proof to the department that he is able and available for work.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs