

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARTIN DOBBINS
Claimant

APPEAL NO. 08A-UI-00462-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOODS INC
Employer

**OC: 12-02-07 R: 02
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 9, 2008, 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 February 13, 2008. The claimant participated in the hearing with Attorney Jennifer Donovan. The employer chose not to participate in the hearing. Claimant's Exhibits A and B 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 night stocker for Foods Inc. from February 2007 to November 14, 2007. On September 23, 2007, the claimant injured his left shoulder while at work. On September 24, 2007, he notified his night supervisor of his injury. On September 25, 2007, the employer asked if the claimant had been to a doctor and he advised them he saw his own physician. On September 26, 2007, he saw his doctor again because the employer had asked for proof of his doctor's visit. The doctor said he could go back to work but could not lift his left arm above his shoulder. The claimant provided his doctor's note to the employer but was told he needed a note specifically releasing him to return to work so the claimant returned to his physician October 1, 2007, and received a note allowing him to return to work with the restriction of not lifting his left arm above his shoulder but his supervisor said he could not work until he made a full recovery. The claimant had follow-up appointments October 15 and November 13, 2007, but the same restrictions remained in place and are still in effect today. On November 14, 2007, the claimant went to see the employer at his office but he was not there and did not return his calls so the claimant filed for unemployment insurance benefits effective December 2, 2007. The employer stated during the fact-finding interview it terminated the claimant's employment November 14, 2007. The claimant is able and available to perform other work that would accommodate his restrictions.

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 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 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). While the claimant was not able to work without restriction beginning September 25, 2007, due to a work-related injury, and the employer apparently did not have any light duty work available for him, the employer has not established any work-connected misconduct on the part of the claimant. Additionally, the claimant has established he is able and available for other work. Therefore, benefits must be allowed.

DECISION:

The January 9, 2008, 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