

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

ROBERT E SPOERNER  
2216 JEFFERSON  
OMAHA NE 68107

OMAHA STANDARD INC  
c/o JOHNSON & ASSOCIATES  
PO BOX 6007  
OMAHA NE 68106-6007

Appeal Number: 05A-UI-06750-SWT  
OC: 06/05/05 R: 01  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated June 24, 2005, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on July 18, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Jessica Meyer participated in the hearing on behalf of the employer. Exhibit A was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as an assembler from June 12, 1995 to June 3, 2005. In May 2005, the employer sent the claimant to the company doctor for evaluation after he had complained that he was not able to perform work that required him to crawl on the ground because of problems with his knees. The claimant has been treated for plantar fasciitis for several years.

In late May 2005, the company doctor issued restrictions that the claimant was limited to standing no more than 15 minutes per hour. The employer discharged the claimant because it determined it had no work meeting the claimant's restrictions.

The claimant filed a new claim for unemployment insurance benefits with an effective date of June 5, 2005. The claimant's podiatrist has released the claimant to work without restrictions effective June 8, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a. The Agency concluded the claimant had quit employment but there is no evidence to support that conclusion. Both the employer and the claimant agreed that the employer terminated the claimant's employment and he had not quit his job. The employer initiated the separation from employment just like in Wills v. Employment Appeal Board, 447 N.W.2d 137 (Iowa 1989), which involved a pregnant nurse's aide whose employment was terminated because she had weight restrictions. The separation from employment must be treated as a discharge.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

While the employer may have been justified in discharging the claimant, work-connected misconduct as defined by the unemployment insurance law has not been established in this case. No willful and substantial misconduct has been proven. Inability to perform one's job is not disqualifying misconduct..

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3. The evidence establishes that as of June 8, 2005, a doctor released the claimant to return to work without restrictions. Since the claimant was able to work for a majority of the week, he is qualified to receive benefits for the week ending June 11, and afterward, provided she is otherwise eligible.

DECISION:

The unemployment insurance decision dated June 24, 2005, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/sc