

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEE E BUETTNER

Claimant

APPEAL NO: 09A-UI-03497-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA

Employer

OC: 01/25/09

Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The University of Iowa (employer) appealed a representative's March 2, 2009 decision (reference 01) that concluded Lee E. Buettner (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 31, 2009. The claimant participated in the hearing with a union representative, Ed Alcock. Dave Bergeon and Susanne Hilleman, a human resource generalist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on June 1, 2008. The claimant worked as a full-time facilities mechanic. In a November 5, 2008 letter to the claimant, the employer informed him he was required to attend treatment. The claimant requested a leave of absence that started on November 5, 2008. Initially, the leave of absence did not have any ending date.

On November 25, 2008, the employer received medical certification that the claimant was tentatively released to return on work on December 24, 2008. The employer did not forward this information to the claimant. The employer assumed the claimant's doctor informed him that he would be released to work again on December 24, 2008. The claimant did not receive this information or did not understand he was required to report to work on December 24 or 26, 2008.

On December 17, 2008, the employer sent the claimant a form for the claimant's doctor to sign indicating the claimant was released to return to work. The employer would not allow the claimant to return to work until his physician signed the release form.

The claimant completed his in-patient treatment on December 23, 2008. The claimant still attended out-patient treatment two times a day, in the morning and late afternoon. The claimant's physician asked the claimant if he thought he could return to work. The claimant indicated he was not ready to return to work. His physician did not sign the release form. The claimant did not contact his supervisor to report he had been released from in-patient therapy but was still unable to work. The claimant understood that as long as he was on a medical leave of absence, he was not required to contact his supervisor.

On January 7, 2009, the claimant injured his back at his home when he shoveled snow. On January 13, Chris Smith, a human resource representative, called and talked to the claimant. Since the claimant had not contacted the employer, Smith called him to find out what was going on. When Smith asked if he planned to return to work and what medical information he had, the claimant indicated he was making an appointment that afternoon and expected to be released. The claimant told Smith that if he were not released, he would contact his supervisor.

When the employer still had not heard anything from the claimant by January 16, Smith sent the claimant a letter repeating what they had talked about on January 13. The January 16 letter was the employer's way of asking the claimant for medical information and formally asking him to contact his supervisor. The claimant does not know if he received or read the employer's January 16 letter.

On January 21, the claimant obtained a release to return to work from a physician who had not originally sent in the medical certification for the leave of absence. This doctor indicated the claimant was on a medical leave of absence November 4, 2008, through January 26, 2009. On January 21, Hilleman called and talked to the claimant about why he had not contacted the employer when he was released from in-patient treatment. The claimant indicated he did not understand he was required to do this when his physician had not released him to return to work. After the claimant injured his back on January 7, he knew he could not perform his job and did not want to return to work until he had recovered from the back injury.

Although the employer received a doctor's statement indicating the claimant should be excused from work November 4, 2008, through January 26, 2009, the employer no longer considered the claimant an employee as of January 26, 2009. The employer ended the claimant's employment because he failed to contact his supervisor after he released from his in-patient treatment and failed to provide medical documentation to support his need for additional time off between December 24 and January 21. The employer considered the claimant to have abandoned his job when he did not contact his supervisor and request more time off after December 24, 2008.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-1, 2-a. The facts do not establish that the claimant quit his employment. Instead, the employer initiated the employment separation and discharged the claimant.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. 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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The employer established business reasons for discharging the claimant. The facts do not, however, establish that the claimant intentionally failed to follow the employer's rules. Instead, the requirement that he contact his supervisor after he was released from in-patient treatment was not communicated to him by the employer. The claimant may have used poor judgment when he did not contact his supervisor after December 24, but his physician had not released him to return to work, which the employer required before the claimant would be allowed to return to work. The claimant understood that as long as he was on a medical leave of absence he was not required to contact his supervisor.

As soon as the employer talked to the claimant on January 13, the claimant made an appointment with his physician. While the employer may have thought the claimant understood he needed to contact his supervisor immediately, the claimant did not have this understanding. The employer and claimant did not effectively communicate with one another. After the claimant saw his physician on January 21, the physician released the claimant to return to work on January 26, 2009.

A combination of poor judgment, ineffective communication, a lack of understanding and the fact the claimant's physician did not release the claimant to return to work until January 26, 2009 resulted in the claimant not realizing he needed to contact his supervisor and provide the employer with additional documentation to verify the need for his continued absence after December 24, 2008. The claimant did not commit work-connected misconduct. Therefore, as of January 25, 2009, the claimant is qualified to receive benefits.

DECISION:

The representative's March 2, 2009 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of January 25, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs