

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JACOB K HARTGERS**  
Claimant

**APPEAL NO. 09A-UI-08372-SW**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TPI IOWA LLC**  
Employer

**OC: 04/26/09**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
Section 96.4-3 - Able to and Available for Work

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated June 2, 2009, reference 01, that concluded he was discharged for work-connected misconduct. A hearing was held on October 13, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing with his attorney, Steven Jayne. No one participated in the hearing on behalf of the employer. Exhibits A, B, and C were admitted into evidence at the hearing.

**ISSUES:**

Was the claimant discharged for work-connected misconduct?

Was the claimant able to and available for work?

**FINDINGS OF FACT:**

The claimant worked full time for the employer from October 2008 to April 8, 2009.

On April 8, 2009, the claimant slipped and fell at work and broke his wrist. His arm was put in a cast, and he was excused from working until April 20, 2009, when his doctor released him for light-duty work. A human resources manager informed the claimant on April 30, 2009, that he would not be allowed to returned to work because the employer alleged he was trying to kick another employee when he fell, which was considered horseplay. The allegation is untrue.

The claimant filed a new claim for unemployment insurance benefits effective April 26, 2009. When he filed for unemployment benefits, he was able to perform many jobs available in the labor market despite his light-duty restrictions. He began actively seeking other employment after his employment with the employer ended.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

No willful and substantial misconduct has been proven in this case.

The next 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 § 96.4-3. The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work, just not work that required lifting with his right hand. There is work available in the labor market meeting such restrictions that the claimant is qualified to perform, and the claimant has been actively looking for such work in compliance with the requirements of the law.

**DECISION:**

The unemployment insurance decision dated June 2, 2009, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css