

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID E ZANDERS

Claimant

APPEAL NO. 14A-UI-02300-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BROWN CUSTOMER DELIGHT GROUP INC

Employer

OC: 01/19/14

Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Brown Customer Delight Group, Inc. filed a timely appeal from a representative's decision dated February 19, 2014, reference 01, which held claimant eligible to receive unemployment insurance benefits finding that the claimant was discharged by the employer under non-disqualifying conditions. After due notice was provided, a telephone hearing was held on March 25, 2014. Claimant participated. Participating on behalf of the claimant were Daniel J. Spellman and Daniel Jay Spellman, Attorneys at Law. The employer participated by Mr. Jerry Sander, Hearing Representative and witnesses, Ms. Kelly Betts, Payroll Manager and Mr. Larry Brown, CEO/President, Brown Customer Delight Group. Claimant's Exhibits One and Two were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

Having considered all the evidence in the record, the administrative law judge finds: David Zanders began employment with the captioned employer, doing business as McDonalds, on January 16, 2012. Mr. Zanders was employed as a full-time field maintenance worker for the company and was paid by salary. His immediate supervisor was Mr. Phil Gauphier, Maintenance Supervisor. The claimant was injured in what appears to be a work-related injury on March 21, 2013. The claimant was hospitalized and underwent surgery. Mr. Zanders was placed on Family Medical Leave by the employer. On medical leave, Mr. Zanders remained in contact with his employer expressing his interest in returning to work as soon as he was medically able to do so.

During the time that Mr. Zanders was away from work on medical leave of absence, the employer re-assigned an in-house maintenance worker to assist two other workers to perform the duties that had previously been assigned to Mr. Zanders.

As time progressed, Mr. Zanders' medical condition improved and the claimant requested to be re-instated by the company performing the same or similar jobs. Because Mr. Zanders had not been fully released without restriction by his physician, the employer was unwilling to allow Mr. Zanders to return to work. Subsequently, after the amount of time that the claimant could be away from work on disability, Mr. Zanders was removed from the company's employment rolls and provided COBRA information by the company, giving the claimant the opportunity to continue his insurance coverage after being separated from employment.

Mr. Zanders filed a claim for unemployment insurance benefits with an effective date of January 19, 2014 because he had been without pay for an extended period of time and although released by his physician for limited duty, his former employer would not allow him to return to work.

It is the employer's position in this matter that the claimant has not been separated from employment and that the claimant continues to be a company employee although he has not been allowed to return to work because of medical restrictions.

REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether the evidence in the record establishes that the claimant was discharged by the employer. It does.

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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. Iowa Department of Job Service, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge may not necessarily be serious enough to warrant a denial of unemployment insurance benefits. Such misconduct must be “substantial.”

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation.

In this matter the evidence in the record shows that Mr. Zanders’ employment with McDonalds came to an end when the amount of time that he could be kept on company payroll based upon his disability elapsed, and then “he had to go on COBRA...” (See Claimant’s Exhibit One).

Although the medical leave of absence entered into between Brown Customer Delight Group and the claimant was described as open-ended until the claimant was able to return to work, the employer made a business decision to separate Mr. Zanders from employment when the claimant’s disability coverage through the company ended. The separation from employment was initiated by the employer at that time and the claimant was provided COBRA rights, information to allow the claimant to continue insurance coverage after being separated by the employer. Because the employer chose to end the claimant’s agreed-upon leave of absence unilaterally, and prior to the agreed time that the company was to keep his job position for him, the claimant’s separation date was considered March 21, 2013. The second question before the administrative law judge is whether the evidence in the record establishes that the claimant was discharged for misconduct in connection with work, it does not.

At the time that the employer chose to end the employment relationship and issue Mr. Zanders his COBRA rights, the employer was aware that Mr. Zanders was unable to return to full employment through no fault of his own. Mr. Zanders had kept the employer informed of his medical condition as agreed and had not engaged in any disqualifying misconduct in connection with his work.

The question before the administrative law judge in this case is not whether the employer has a right to discharge the employee for this reason but whether the discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to release and/or replace Mr. Zanders may have been a sound decision from a management viewpoint, for the above-stated reasons, the administrative law judge concludes that the claimant’s discharge did not take place under disqualifying conditions. It further appears at the time Mr. Zanders opened his claim for unemployment insurance benefits he was sufficiently recovered to be able to work in the general workforce in job positions that are generally available in the geographic area where Mr. Zanders resides and that the claimant has been available for work and actively seeking new employment while claiming unemployment insurance benefits.

DECISION:

The representative's decision dated February 19, 2014, reference 01, is affirmed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css