

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KENNETH H BARLOW**

Claimant

**CAMP DODGE – HOMELAND SECURITY**

**583**

Employer

**APPEAL 15A-UI-11443-CL**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/20/15**

**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available – Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 9, 2015, (reference 01) unemployment insurance decision that denied benefits based upon a voluntary quit. The parties were properly notified about the hearing. A hearing was held on November 24, 2015, in Des Moines, Iowa. Claimant participated. Employer participated through human resources associate, Janie Keubler, and Brigadier General Ben Corell. Employer's Exhibits 1, 2, 3, 4, 6, 7, 8, 9, and 10 were received.

**ISSUES:**

Did claimant voluntarily leave the employment with good cause attributable to employer or did employer discharge claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a storekeeper I from February 2014, and was separated from employment on January 21, 2015, when he was terminated.

On August 6, 2014, claimant went on Family and Medical Leave Act (FMLA) leave due to a non-work-related injury. When his leave expired, employer advised him he could apply for a 90-day unpaid medical leave. Claimant applied for the 90-day unpaid medical leave and his request was approved.

On January 13, 2015, employer sent claimant a letter stating his medical leave expired on January 13, 2015. The letter stated claimant was required to report to work on January 21, 2015, with a release from his physician. The letter further stated that if claimant was unable to return to work due to his medical condition, he would be removed from payroll effective January 21, 2015. Even if claimant had requested additional unpaid leave due to his medical condition, his request would have been denied.

Claimant was unable to obtain a release from his physician, so he did not return to work. Employer removed claimant from its payroll effective January 21, 2015.

Claimant's physician released him to return to work with no restrictions shortly before he filed his claim for unemployment benefits on September 20, 2015. While claimant personally feels he is unable to return to the storekeeper position due to the lifting requirements, he is looking for security and computer work and has experience in both fields.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant did not quit but was discharged for no disqualifying reason.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Here, claimant had no intention to terminate the employment relationship. Claimant was physically unable to return to work due to his medical condition. Because claimant was unable to return to work, employer made the decision to end the employment relationship. Claimant was discharged.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Here, claimant is not disqualified for benefits based on the separation. Claimant was terminated because he could not return to work with a release from his physician on January 21, 2015. Claimant was given no other option to continue the employment relationship. This is not misconduct.

Furthermore, claimant is able to work and available for work effective September 20, 2015.

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that the individual is able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4(3).

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Here, claimant was released by his physician to return to work with no restrictions prior to filing for unemployment benefits. Claimant is searching for security and computer work consistent with his work history. Claimant has established his ability to work.

**DECISION:**

The October 9, 2015, (reference 01) decision is reversed. The claimant did not quit but was discharged for no disqualifying reason. He is able to and available for work as of September 20, 2015. Benefits are allowed, provided the claimant is otherwise eligible.

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Christine A. Louis  
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Decision Dated and Mailed

cal/pjs