

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DESHAUN A WHITE**  
Claimant

**APPEAL NO. 17A-UI-10504-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BUILDING PRODUCTS INC OF IOWA**  
Employer

**OC: 01/01/17**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

Building Products Inc. of Iowa (employer) appealed a representative's October 5, 2017, decision (reference 03) that concluded DeShaun White (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for November 1, 2017. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Shante Jackson, Human Resources Manager. Exhibit D-1 was received into evidence. The employer offered and Exhibit 1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 6, 2016, as a full-time pre-finish worker. The claimant signed for receipt of the employer's handbook on June 10, 2016. The employer did not issue the claimant any warnings during his employment. At the end of his employment the claimant took Family Medical Leave Act and short-term disability for a non-work-related injury. He provided a note to the employer from his physician dated July 7, 2017, returning him to work without restrictions.

After speaking with the claimant, the human resources manager sent the claimant to the employer's physician for a "Fit for Duty Evaluation". On July 14, 2017, the employer's physician wrote a comment on the evaluation. "Need restrictions per PCP re: limitations of lifting/limitations of use (L)UE, limitation on time of wk at return. (May need to start 40 per day?)" On July 20, 2017, the human resources manager met with the claimant. She told the claimant he was terminated because he did not follow the employer's physician's instructions to see his primary doctor and get restrictions.

The claimant filed for unemployment insurance benefits with an effective date of January 1, 2017. He has received no unemployment insurance benefits after his separation from employment. The employer participated personally at the fact finding interview on October 4, 2017, by Shante Jackson.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). While an employer has a right to expect employees to follow instructions in the performance of the job, the employer must first issue the instruction. No instruction was issued by the employer in this case. The employer's doctor wrote a cryptic note ending in a question mark. The doctor was not the claimant's supervisor. The claimant was never notified that failure to follow the doctor's note to see his primary care

physician would result in his termination. In addition, the claimant had already been released without restrictions by his primary care physician. The employer did not provide any evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's October 5, 2017, decision (reference 03) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs