

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JACOB L COMER**

Claimant

**INVESTCO MORTGAGE COMPANY INC**

Employer

**APPEAL NO: 11A-UI-03339-S**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/28/10**

**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The claimant appealed a department decision dated March 11, 2011, reference 02, that held he voluntarily quit without good cause on October 15, 2010, and benefits are denied. A hearing was held in Des Moines, Iowa on April 27, 2011. The claimant participated. The employer did not participate.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant began employment in April 2008, and last worked as a full-time senior mortgage banker on July 6, 2010. The employer granted claimant a medical leave to be off work for back surgery that was performed on July 20.

The employer called claimant on October 4 to return to work as he had exhausted his medical leave. Claimant had not been released to return to work by his doctor, but he requested he be given until his November 4 doctor appointment when he expected the release. The employer declined the claimant and advised him that he would be replaced. Later, the employer notified claimant his medical insurance was being terminated. Claimant did receive a release to return to work without any restriction that would preclude his banking employment.

The employer failed to appear for the hearing.

**REASONING AND CONCLUSIONS OF LAW:**

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 administrative law judge concludes the employer has failed to establish claimant was discharged for misconduct in connection with employment on October 4, 2010.

Claimant's employment termination for not having a medical clearance to work at the end of a medical leave period is not job disqualifying misconduct. While the employment separation for surgery on July 6 was voluntary, claimant did intend to return to work when released to do so. He did not quit his job.

**DECISION:**

The department decision dated March 11, 2011, reference 02, is reversed. The claimant was not discharged for misconduct on October 4, 2010. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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