

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHAN W FINLEY
Claimant

APPEAL NO. 13A-UI-10213-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MITCH MURCHS MAINTENANCE
MANAGEMENT COMPANY**
Employer

**OC: 08/11/13
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Nathan Finley (claimant) appealed a representative's September 3, 2013, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with Mitch Murchs Maintenance Management Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 3, 2013. The claimant participated personally. The employer participated by Aric Heckert, Project Manager.

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 November 5, 2012, as a part-time custodian. On May 20, 2013, the claimant reported to the employer that he had an injury to his hands that he started noticing on May 17, 2013. The employer told the claimant to go to the doctor and the claimant went to a free clinic. The doctor diagnosed the claimant with contact eczema from being in contact with chemicals. The claimant's only contact with chemicals was at work. The claimant provided the employer with the doctor note and reported his absence each day. On May 24, 2013, the claimant notified the employer that the condition was work related. The employer did not complete a first report of injury form or send the claimant to see the employer's physician. The employer told the claimant to come in on May 29, 2013, and sign some paperwork. The claimant appeared on May 29, 2013. The employer told the claimant to sign a document that said he voluntarily quit work and another document that said the condition was not work related. The claimant refused to sign the documents. The employer took the claimant's badge and ended his employment.

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:

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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of absence was a properly reported medical condition which occurred in May 2013. The claimant's absence does not amount to job misconduct because it was properly reported.

The employer terminated the claimant also for failing to follow the employer's instructions in signing the forms. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employees reason for noncompliance. Endicott v. Iowa Department of Job Service, 367 N.W.2d 300 (Iowa App. 1985). The claimant did not sign the forms because he believed that the medical condition was caused by chemicals at work. It would not be truthful to sign a form to the contrary. He did not wish to quit his job and signing a voluntary quit form under duress would not be voluntary. The employer was not being reasonable in requiring the claimant to sign the forms. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged but there was no misconduct.

DECISION:

The representative's September 3, 2013, decision (reference 01) is reversed. The employer has not met its proof to establish job related misconduct. Benefits are allowed.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs