

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALLEN BATY
Claimant

YRC INC
Employer

APPEAL 20A-UI-00310-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/15/19
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.5(1)d – Voluntary Quitting/Illness or Injury

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated January 6, 2020, (reference 01) that held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on January 30, 2020. Claimant participated personally and was represented by Corey J. L. Walker, Attorney at Law. Employer participated by Skyler Wirtz, Manager. Employer's Exhibits 1-12, and claimant's Exhibits A-G were admitted into evidence.

ISSUES:

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

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant last worked for employer on November 5, 2019. Employer separated claimant from his employment and wages on December 5, 2019, because claimant had been injured at work, and he could not work without any medical restrictions.

Claimant began working for employer as a full-time delivery driver in January, 2018. Claimant was injured at work in April, 2019. Claimant was later released back to work with lifting restrictions in July, 2019. Claimant and his attorney worked with employer as it attempted to provide claimant light duty work tasks he could perform with his lifting restrictions.

Claimant was assigned to work 2:30 a.m. to 6:30 a.m. in August, 2019. Claimant was assigned to perform yard checks, and to walk around the yard where trucks were parked. Claimant was not allowed to go inside to take breaks, and he was not allowed in the building if it rained or if it was cold. He was given a vest, a dress code, and a list of rules. He was told that if he failed to follow employer's instructions for any reason he would lose his workers compensation benefits.

Claimant had difficulty standing, walking, and being outdoors alone for very many hours. Claimant went back to his doctor and he was given new work restrictions in October, 2019. On October 16, 2019 claimant's work schedule was changed to 8:00 p.m. to 4:30 a.m. each day. Claimant was only allowed in the building during his breaks. He had to be outdoors for the rest of his shift. He had to be outdoors when it rained, and when it was cold.

Claimant believed that employer was intentionally trying to give him assignments that were impossible for him to complete. He was alone most of the time at night, and he experienced pain and discomfort being in the cold and the rain. Claimant sought shelter during storms, and he was observed not following his job description by a manger. Claimant failed to perform his light duty tasks in a satisfactory manner. He failed to sit where he had been assigned, and he failed to hang extension cords on poles.

Employer decided to terminate claimant's modified work assignment and his worker's compensation benefits on December 4, 2019. Claimant was notified that it was unable to accommodate his restrictions, and it would no longer attempt to work with him because he was unable to complete assigned tasks in a satisfactory manner. Claimant was not allowed to return to work, and his pay ended on December 4, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was separated from the employment for no disqualifying reason.

Iowa Code section 96.5(1)d provides:

An individual shall be disqualified for benefits:

1. *Voluntary quitting.* If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25(35) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- a. Obtain the advice of a licensed and practicing physician;
- b. Obtain certification of release for work from a licensed and practicing physician;
- c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- d. Fully recover so that the claimant could perform all of the duties of the job.

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.

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).

Iowa Admin. Code r. 871-24.32(7) provides:

(7) *Excessive unexcused absenteeism.* Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. 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 Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Absences due to properly reported illness cannot constitute work-connected misconduct since they are not

volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007).

Where an employee did not voluntarily quit but was terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer services pursuant to the subsection d exception of Iowa Code section 96.5(1). *Prairie Ridge Addiction Treatment Servs. v. Jackson and Emp't Appeal Bd.*, 810 N.W.2d 532 (Iowa Ct. App. 2012).

The claimant is not required to return to the employer to offer services after the medical recovery because he has already been involuntarily separated from the employment while under medical care.

The employer's modified work assignments were unreasonable. Claimant was asked to perform tasks that were difficult for him to perform while he was convalescing from his work-related injuries. Employer assigned claimant to work outside during the night and early morning hours. Claimant was given a chair he could sit on outside, but his access to shelter during storms and when it was cold was limited by the employer. If claimant went inside during rain, or when it was below zero he was accused of violating employer's modified work assignments. Claimant's involuntary separation from employment while under medical care was not for job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The January 6, 2020, (reference 01) unemployment insurance decision is affirmed. The claimant was separated from the employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/rvs