

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN M KASTANTIN**  
Claimant

**APPEAL NO: 10A-UI-05828-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WILD ROSE CASINO & RESORT**  
Employer

**OC: 05/10/09**  
**Claimant: Appellant (2/R)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed a representative's April 14, 2010 decision (reference 02) that disqualified him from receiving benefits, and held the employer's account exempt from charge because he voluntarily quit his employment for reasons that do not qualify him to receive benefits. A telephone hearing was held on May 26, 2010. The claimant participated in the hearing with his witness, Cheryl Kastantin. Kristina Snyder and Vicki Quick, a human resource generalist, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on January 19, 2000. The claimant worked as a full time hotline buffet attendant. Prior to August 3, 2009, the claimant exhausted all his available leave under the Family Medical Leave Act.

The claimant worked as scheduled on August 3, 2009. Before his August 5 shift, the claimant fell at his home and broke his leg. As a result of his injury, the claimant was hospitalized and had surgery. His sister-in-law, Cheryl, notified the employer about the claimant's hospitalization. She informed the employer that he could be in the hospital for a while. The claimant was hospitalized August 5 through September 2, 2009. During his hospitalization, the claimant contacted the employer about his employment and any benefits he could receive.

The employer informed him that because he did not have medical leave remaining under the Family Leave Medical Act, the employer could not guarantee the claimant his job when his doctor released him to return to work. The claimant was eligible to go on short-term and then long-term disability through the employer's insurance carrier. While he was in the hospital, the claimant signed paperwork indicating he quit because he was unable to work.

The claimant's doctor released him for light-duty work in December 2009. The claimant's work restrictions prevented him from standing or walking for more than 30 minutes. The claimant contacted the employer about a job within his work restrictions in December, but the employer did not have any light duty work. In February 2010 the claimant's physician told the claimant that he could not return to working as a hotline buffet attendant or do any work that required him to be on his feet.

As of the date of the hearing, the claimant still receives long-term disability benefits. He has applied for Social Security Disability benefits.

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

A claimant is not qualified to receive benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for work-connected misconduct. Iowa Code section 96.5-1, 2-a.

The evidence establishes that even if the claimant had not signed paperwork indicating he resigned, the employer would not continue his employment because the claimant was unable to work and had exhausted all of his medical leave. For unemployment insurance purposes, the employer initiated the termination of the claimant's employment.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant's employment ended because he was unable to work after he broke his leg. Inability or incapacity to work does not constitute work-connected misconduct. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of March 7, 2010, the claimant is qualified to receive benefits based on the reasons for his employment separation.

Even though the claimant reopened his claim during the week of March 7, 2010, the evidence presented during the hearing indicates there is an issue of the claimant's ability or availability to work with his work restrictions and his receipt of long-term disability benefits. The issue of whether the claimant is able to and available for work as of March 7, 2010, is remanded to the Claims Section to determine. The Claims Section shall issue a written decision that will be sent to both the claimant and the employer.

**DECISION:**

The representative's April 14, 2010 decision (reference 02) is reversed. The claimant did not voluntarily quit his employment. Instead, the employer ended the claimant's employment. The claimant's discharge was for reasons that do not constitute work-connected misconduct. As of March 7, 2010, the claimant is qualified to receive benefits based on the reasons for his employment separation. Even though the claimant reopened his claim for benefits as of March 7, 2010, his work restrictions in addition to his receipt of long-term disabilities puts at issue his eligibility to receive benefits based on his ability and availability to work. This issue of whether the claimant is able to and available for work as of March 7, 2010, is remanded to the Claims Section to determine and to issue a written decision that will be sent to both parties.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs