

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROYCE S SIMMONS
Claimant

APPEAL NO: 09A-UI-16617-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 10/11/09

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Royce S. Simmons (claimant) appealed a representative's October 28, 2009 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 10, 2009. The claimant participated in the hearing and was represented by Paul McAndrew, Attorney at Law. The employer submitted a statement prior to the hearing, admitted to the record as Employer's Exhibit A, indicating it was not participating in the hearing. During the hearing, Claimant's Exhibits One through Four were entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on September 2, 2003. He had worked full time as a custodian. He had suffered a work-related hand injury resulting in some permanent restrictions effective August 15, 2006. He was provided with a modified duty position with the employer. On May 30, 2007, he suffered a work-related injury to an ankle, which he reinjured at work on September 8 2007. He underwent two surgeries. Due to increased medical restrictions, he last actively worked on or about February 7, 2009.

On August 13 the occupational health physician treating the claimant indicated he was at maximum medical improvement for his ankle injury and imposed permanent work restrictions which included a conclusion that he claimant could only stand and walk for three hours per day, but only 40 minutes at a time followed by at least 30 minutes sitting, with no ladder climbing or crouching or squatting, and infrequent steps, stairs, crawling, or kneeling, plus specified lifting restrictions. On August 25 the claimant met with the employer's representatives to discuss the restrictions. The employer determined that it could not accommodate the permanent restrictions. As a result of this conclusion as well as the fact that the claimant had exhausted

his allowable medical leave without pay, the employer determined to terminate the claimant's employment effective August 26. The employer informed the claimant of this decision by letter dated August 27, 2009.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer was right to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate matters. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer for discharging the claimant was that his permanent restrictions would not allow him to perform the essential functions of his job and that he had exhausted his allowable leave. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

DECISION:

The representative's October 28, 2009 decision (reference 01) is reversed. The employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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