

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALVARO CERVANTES
Claimant

APPEAL NO: 06A-UI-09122-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CARL SCHULER MASONRY
CONSTRUCTION COMPANY**
Employer

**OC: 08/13/06 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Alvaro Cervantes (claimant) appealed a representative's September 6, 2006 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he had voluntarily quit employment with Carl Schuler Masonry Construction (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 27, 2006. The claimant was represented by John Pieters, Senior, Attorney at Law, and participated personally. The employer participated by Ann Schuler, Secretary/Treasure and Steve Schuler, President.

ISSUE:

The issue is whether the claimant was discharged for misconduct and is not eligible to receive unemployment insurance benefits.

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 January 20, 2005, as a full-time laborer. On November 3, 2005, the claimant suffered a work-related injury to his back. The employer sought treatment for the claimant. After recovery the claimant was released to return to work without restriction by his employer.

In June 2006, the claimant suffered a re-injury of his back while at work. He reported this to his supervisor but the supervisor did not report it to the employer or complete the proper paperwork for workers' compensation. The claimant sought medical treatment on June 25, 2006. The physician returned the claimant to work with restrictions.

On August 7, 2006, the employer requested an updated note from the claimant's physician. The claimant attempted to return but the employer would not pay for the doctor's visit because it was unaware that the injury was work-related. On August 11, 2006, the employer terminated the claimant for failure to provide the employer with an update physician's note.

The claimant filed for unemployment insurance benefits with an effective date of August 13, 2006. The claimant found other work on September 13, 2006. He continues to work for the new employer under the physician's restrictions of June 25, 2006.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge finds the claimant was not discharged for misconduct and is eligible to receive unemployment insurance benefits.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide any evidence of misconduct at the hearing. The employer separated the claimant from employer because he failed to provide a new release from a physician due to a work-related injury. Where disability is caused or aggravated by the employment, a resultant separation is with good

cause attributable to the employer. Shontz v. Iowa Employment Security Commission, 248 N.W.2d 88 (Iowa 1976). Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's September 6, 2006 decision (reference 01) is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/cs