

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARIN D TATE
Claimant

APPEAL NO. 13A-UI-02374-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

A-LERT
Employer

OC: 01/20/13
Claimant: Appellant (2)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Darin Tate (claimant) appealed a representative's February 25, 2013 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he voluntarily quit work with A-Lert (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 26, 2013. The claimant participated personally. The claimant's wife, Melissa Tate, and father, Edward Tate, were available to testify. The employer participated by Brenda Wooten, Employee Services Assistant, and Steve Wilson. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit One was received into evidence.

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 27, 2010, as a full-time millwright. He worked in Iowa but his home was in Arkansas. The claimant signed for receipt of the employer's handbook on January 13, 2012. On December 10, 2012, the claimant smashed his hand at work and immediately reported his injury to his direct supervisor. His supervisor made fun of the claimant of getting his hand caught but did not make a report of injury or send the claimant to a physician.

On December 12, 2012, the claimant could not take the pain any longer. He went to a clinic and paid the bill himself. The claimant found he had fractured multiple bones in his thumb in a work injury. The physician restricted him from work for six weeks. The claimant provided the doctor's note to the employer and informed the employer he would be returning to his home in Arkansas. The employer told the claimant to file for unemployment insurance benefits but not to report it as a work injury because the employer's rates would increase. The employer told the claimant to see the claimant's personal physician. The employer assured the claimant that it would deal with the claimant's direct supervisor. The supervisor was reprimanded. The claimant immediately returned to Arkansas and sought legal counsel.

On December 13, 2012, the claimant was on pain medication. The claimant did not report his absences to the employer because he provided the doctor's note and spoke to the employer about his work injury. On December 14, 2012, the Director of Safety and Loss Control called the claimant and talked about making doctor appointments with the employer's physicians in Kansas. The claimant's pain medication indicated that he was not to drive. On December 15, 2012, the Director of Safety and Loss Control told the claimant the company would pay the claimant wages for December 13 and 14, 2012. The director reminded the claimant that he had a company doctor appointment in Kansas on December 17, 2012. The claimant knew he could not drive and he was told by the employer not to see a company doctor. Following his doctor's and the employer's instructions, he did not go to the company doctor's appointment on December 17, 2012.

On December 19, 2012, the Director of Safety and Loss Control sent the claimant a letter stating that the claimant had to contact him by December 26, 2012, or the claimant's employment would be terminated. The director considered the claimant's employment to have ended on December 15, 2012.

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.

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 terminated the claimant for absenteeism after the claimant reported his work-related injury and provided a doctor's note that said he could not work for six weeks. The employer did not provide sufficient evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's February 25, 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/tll