

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEREMY G FISHER**  
Claimant

**APPEAL NO: 13A-UI-06848-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DOLGENCORP LLC / DOLLAR GENERAL**  
Employer

**OC: 05/12/13**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge  
Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

Jeremy G. Fisher (claimant) appealed a representative's June 4, 2013 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Dolgencorp, L.L.C. / Dollar General (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 17, 2013. The claimant participated in the hearing. Lynn Cargin 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:**

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

**OUTCOME:**

Reversed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant started working for the employer on April 17, 2012. He worked part time (about 15 hours per week) as a sales associate in the employer's Vinton, Iowa store, usually on a 5:00 p.m. to 10:30 p.m. schedule three or four days per week. His last day of work was March 4, 2013.

The claimant was scheduled to undergo a medical procedure on March 7, preliminary to a surgery initially scheduled for March 13. He was scheduled for work on March 6, but as there was preparation for the medical procedure which would incapacitate the claimant on March 6, he informed the employer in advance that he would not be able to work on that date, and he was excused.

After the procedure was completed on March 7, the claimant's doctor advised him that he should stay off work until after the surgical procedure, which was moved up to March 12. On the morning of March 8 the claimant informed the employer's assistant manager that he would not be able to work his shift that day because of the doctor's orders, and that he would not be able to work any other shifts until after he was released after the surgery.

After the surgical procedure on March 12 the claimant's wife called the employer and spoke to the manager, intending on updating the employer on how the procedure had gone. The store manager responded that the claimant should not bother returning to work, as she considered the claimant to have been a no-call, no-show for work on March 8 and one other unspecified date between March 8 and March 12; apparently the assistant manager had failed to convey the fact of the claimant's contact on March 8 to the manager.

The claimant's doctor did not release him for work until April 19; he informed the store manager of this upcoming release on April 16. While the employer had made some profession of intending to allow the claimant to come back to work after March 12, when the claimant contacted the manager she informed him that she was unable to return him to the schedule; she never recontacted the claimant to advise him she had determined to and had been able to in fact return him to the schedule.

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

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a. A voluntary quit is a termination of employment initiated by the employee – where the employee has taken the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has taken the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c).

Rule 871 IAC 24.25 provides that, 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. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. *Bartelt v. Employment Appeal Board*, 494 N.W.2d 684 (Iowa 1993); *Wills v. Employment Appeal Board*, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that he quit by job abandonment. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit. Iowa Code §96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21); *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992).

The issue in this case is then whether the employer effectively discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but 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 decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). 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).

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 the employer effectively discharged the claimant was his missing work after March 4, 2013. The claimant reasonably believed that he had properly informed the employer of his upcoming absences due to medical reasons when he spoke to the assistant manager on March 8. 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 June 4, 2013 decision (reference 01) is reversed. The claimant did not voluntarily quit and 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.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs