

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GORDON L WILSON
Claimant

AEROTEK INC
Employer

APPEAL NO. 17A-UI-06886-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/28/17
Claimant: Appellant (2R)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 28, 2017, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on July 25, 2017. Claimant participated. Employer did not participate.

ISSUE:

Whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 26, 2017. Claimant was told that, as of that date, employer could not continue to provide light duty work for claimant and he would need to have surgery prior to his return to work.

Claimant stated that he began work for employer on or around May, 2017. Prior to beginning work, claimant went through a company physical. Said physical did not indicate medical problems. As a part of claimant's routine work at his placement at Kemin Industries, claimant lifted and moved 55 pound bags of chemicals many times a day.

In September of 2016, claimant discovered he'd developed a hernia that was bulging in his midsection. Employer received notice from claimant's doctor that he was to be placed on light-duty work. From September 2016 through May 2017 claimant worked light duty for employer. Employer created a position for claimant to work, as claimant explained that there hadn't been a particular janitorial position prior to him being placed in that position. Prior to claimant's being put in the position, all workers had jointly done cleanup.

Employer alerted claimant that this light duty would not be continuing after June 1, 2017, and claimant would need to have surgery prior to his returning to work. Claimant's last day of work was May 26, 2017 as claimant had no insurance and needed to have a period of time without work prior to his receiving state insurance to cover his surgery. Claimant had surgery on July

12, 2017 and to date has not received a specific release to return to work. Claimant was told that he needed six to eight weeks of recovery by his doctor. Claimant did state that he is able to return to work in some capacity, just not involving lifting anything over 8 pounds.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct 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. Rule 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 Ct. 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*.

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. 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. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning a need to get surgery accomplished for a job-related injury within a reasonable period of time.

The last incident, which brought about the discharge, fails to constitute misconduct because claimant was asked to get surgery as he was not allowed to continue with the accommodated job he'd been working for over half a year. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

It appears that claimant has been, and remains unable to work. This matter will be remanded to the fact finder for determination as to the period of time when claimant is not able and available for work.

DECISION:

The decision of the representative dated June 28, 2017, reference 01, is reversed. Unemployment insurance benefits are allowed provided claimant is otherwise eligible. This matter is remanded to the fact finder for determination as to whether claimant has been able and available for work throughout his periods of unemployment filings.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn