

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAYMOND P BAUCOM
Claimant

APPEAL NO. 08A-UI-10348-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WRIGHT TREE SERVICE INC
Employer

**OC: 09/28/08 R: 01
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Wright Tree Service, Inc. (Wright) filed an appeal from a representative's decision dated October 30, 2008, reference 01, which held that no disqualification would be imposed regarding Raymond Baucom's separation from employment. After due notice was issued, a hearing was held by telephone on November 19, 2008. Mr. Baucom participated personally. The employer participated by Cindy Reavis, Claims Administrator, and John Cates, General Foreman. The employer was represented by Karen Brewin of TALX Corporation. Exhibits One, Two, and Three were admitted on the employer's behalf.

ISSUE:

At issue in this matter is whether Mr. Baucom was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Baucom began working for Wright on May 10, 2007 as a full-time tree trimmer. He sustained a work-related injury to his back on August 20, 2007. He returned to work after being released by his doctor and last performed services on August 8, 2008. On or about August 10, he notified the employer that he was having back problems he believed were related to his prior injury.

Mr. Baucom provided medical documentation of the need to be off work after August 10. On September 18, he was released to return to work without restrictions. Mr. Baucom gave the release to John Cates on September 19. He told Mr. Cates that he could perform most of his job but might have difficulty climbing. He told Mr. Cates he would let him know if and when his back bothered him. He did not tell Mr. Cates he was quitting. Mr. Cates indicated he would relay the information to the office. Mr. Baucom's prior supervisor had accommodated his occasional back problems by allowing him to rest or modifying his work.

Mr. Baucom called Mr. Cates several times after September 19 to find out when he was to return to work. He called periodically for a period of approximately two weeks. He was not

allowed to return. The employer felt he had voluntarily quit when he informed the general foreman he might have trouble with some of his duties.

REASONING AND CONCLUSIONS OF LAW:

The employer contended that Mr. Baucom quit his employment. To find a voluntary quit, there must be evidence of an intention to sever the employment relationship accompanied by some overt act of carrying out that intent. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). The fact that Mr. Baucom continued to contact the employer about returning to work after he advised the foreman of potential problems is indicative of a desire to remain in the employment. There was no evidence to suggest any intention to sever the employment relationship. It was the employer's decision that Mr. Baucom would not be allowed to return to work. Since the employer initiated the separation, it is considered a discharge.

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Mr. Baucom was discharged after he told his foreman he was still having pain and might have problems climbing. Mr. Cates acknowledged during the hearing that Mr. Baucom said he would let him know when he was having problems. Putting his foreman on notice that he might have occasional trouble performing one task does not constitute a disregard for the employer's standards. Mr. Baucom did have a full release but was never given the opportunity to try to perform his job without accommodation.

The employer herein has failed to establish that Mr. Baucom deliberately and intentionally acted in a manner he knew to be contrary to the employer's standards or interests. As such, benefits are allowed.

DECISION:

The representative's decision dated October 30, 2008, reference 01, is hereby affirmed. Mr. Baucom was discharged by Wright, but misconduct has not been established. Benefits are allowed, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw