

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NICOLAS S LEON**  
Claimant

**APPEAL NO. 10A-EUCU-00978-SW**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**R-GUARANTEE INSULATION INC**  
Employer

**OC: 01/10/10**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated October 21, 2010, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A hearing was held on January 24, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing with his attorney, Robert Deck, and witnesses Ismeralda Leon and Saul Leon. Mark Kocho participated in the hearing on behalf of the employer. Exhibits A and B were admitted into evidence at the hearing.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full-time as an insulation installer for the employer for over seven years. His last day of physical work was August 13 because he injured his neck and back at work that day.

The claimant was off work with a doctor's excuse from August 13 to September 24, 2010. On September 24, the claimant visited his doctor and was released to return to work without restriction that day. The claimant called his supervisor, Mark Koch, on September 26 to let him know he could return to work. Koch was not available, so the claimant left a message stating that his doctor had released him to return to work and he was ready to return to work.

Sometime on September 27, Koch called the claimant back and left a message that the claimant could not return to work until Koch had a medical statement that released him to return to work without restrictions. The claimant had been working with an attorney, Robert Deck, because the employer did not have workers' compensation, so he had Deck send the doctor's statement to Koch on September 27.

After sending the doctor's statement, the claimant called Koch several times but was not able to talk to him personally about returning to work. Phone records show three calls on September 27 and one on September 28. Koch did talk to Deck at some point in regard to

settling the work injury claim and told him that he still did not have workers' compensation insurance and understood that the claimant was working on his brother's restaurant so he did have work for him. Deck told Koch that he did not want Koch contacting his client, so Koch did not try contacting the claimant again. Deck told the claimant what Koch had said, so the claimant did not try contacting Koch again.

**REASONING AND CONCLUSIONS OF LAW:**

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The difficulty here is that I believe the separation from employment was largely due to lack of communication and miscommunication. I believe the claimant was able to work starting September 24 and communicated this to the employer on September 26, 27, and 28. The employer was sent a medical statement releasing the claimant to return to work without restrictions as requested. The claimant reasonably believed that the employer did not have any work for him based on what his attorney told him. Koch was told not to contact the claimant directly, which impeded the claimant's returning to work.

Ultimately, the preponderance of the evidence establishes the claimant did not voluntarily quit employment. He was not discharged for misconduct as defined by the unemployment insurance law in Iowa Code § 96.5-2-a and 871 IAC 24.32(1). There has been no refusal of work here, because no personal offer of work or written offer of work by certified letter has been made as required by 871 IAC 24.24(1)a.

This is unfortunate because it seems the claimant desired to return to work for the employer and the employer considered the claimant a valuable employee.

The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

**DECISION:**

The unemployment insurance decision dated October 21, 2010, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw