

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANDY L MCCOID**  
Claimant

**APPEAL NO: 07A-UI-04798-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STAFFCO OUTSOURCE MANAGEMENT**  
Employer

**OC: 04/01/07 R: 04**  
**Claimant: Respondent (1/R)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Staffco Outsource Management (employer) appealed a representative's May 1, 2007 decision (reference 01) that concluded Andy L. McCoid (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 4, 2007. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate at the hearing. As a result, no one represented the claimant. Kelly Graves and Teresa Jacobs, the human resource coordinator, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer in September 2006. The claimant worked full time as a laborer/production baler. On March 13, 2007, the claimant notified the employer he had hurt his shoulder at home. The claimant went home early on March 13 because his shoulder hurt. On March 14, the claimant again went home early, about 90 minutes, because his shoulder hurt.

On March 15, 2007, the claimant asked to go home early again. The employer's safety coordinator talked to the claimant because it was apparent the claimant could not do his work after he had injured himself. The employer asked the claimant to see a doctor to find out what he needed to do so to recover from his injury. The employer told the claimant to keep the employer apprised of his on-going condition and asked the claimant to return to work when he

was released to work without any work restrictions. The claimant left work early on March 15 and indicated he would try to see a doctor.

When the claimant picked up his paycheck on March 23, he did not know when he could return to work. The claimant has not contacted the employer anytime after March 23, 2007. The claimant established a claim for unemployment insurance benefits during the week of April 1, 2007.

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

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-1, 2-a. The claimant became unemployed as of March 16 because he injured himself at home and was unable to do his job. The employer initiated this employment separation by telling the claimant he needed to see a physician, could return to work when he had recovered from his injuries and was fully released to work by his doctor.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). 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. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

This case is similar to Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989), where the Iowa Supreme Court considered the case of a pregnant certified nursing assistant (CNA) who went to her employer with a physician's release that limited her to lifting no more than 25 pounds. Wills filed a claim for benefits because the employer would not let her return to work because its policy did not provide light-duty work to employees. The court ruled that Wills became unemployed involuntarily and was able to work because the weight restriction did not preclude her from performing other jobs available in the labor market. Id. at 138. The court characterized the separation from employment as a termination by the employer, but in essence the employer informed the claimant that it did not have any jobs available meeting her restrictions and would not create a job to accommodate her restrictions. The court does not mention Iowa Code section 96.5-1-d at all. Perhaps significantly, the facts do not indicate that the claimant had stopped working at any point, and it was the employer who requested that she go to her doctor to get a release to continue working. Like the Wills case, the claimant continued reporting to work even though he was injured. Based on the evidence presented during the hearing, the employer initiated the employment separation by laying off the claimant

on March 15, 2007 because he was unable to perform his job. Since the claimant did not commit work-connected misconduct, he is not disqualified from receiving benefits.

An issue of whether the claimant is able to and available for work as of April 1, 2007, is remanded to the Claims Section to investigate and issue a written determination. The evidence presented at the hearing indicates the claimant was not available to work as of March 15 because he was unable to do his work after he hurt himself. The evidence does not establish what if any work restrictions the claimant had as of March 15 or if or when he recovered from these injuries. The Claims Section may also review the issue of whether the claimant has been overpaid any benefits as of April 1, 2007.

**DECISION:**

The representative's May 1, 2007 decision (reference 01) is affirmed. The employer initiated the employment separation when the claimant was unable to perform his work as the result of an off-duty injury. The claimant did not commit work-connected misconduct. Therefore, as of April 1, 2007, the claimant is qualified to receive benefits based on the reasons for his March 15, 2007 employment separation. The employer's account may be charged for benefits paid to the claimant. The issues of whether the claimant is able to and available for work and has been overpaid any benefits is remanded to the Claims Section to investigate and issue a written decision.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs