IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

QUENNEL L MCCALEB
Claimant

MENARD INC
Employer

APPEAL NO: 10A-UI-07413-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 04/04/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Leaving
871 IAC 24.22(2)j – Leave of Absence

STATEMENT OF THE CASE:

Quennel L. McCaleb (claimant) appealed a representative's May 14, 2010 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with his employment with Menard, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 12, 2010. The claimant participated in the hearing. Jeff Feser 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?

FINDINGS OF FACT:

The claimant started working for the employer on June 3, 2008. Since about July 19, 2009 he worked full time as first assistant floor covering manager in the employer's Fort Dodge, Iowa store. His last day of actual work was December 20, 2009.

The claimant had injured his knee off duty, resulting in surgery. He requested and was placed on FMLA (Family Medical Leave) effective December 21, 2009. His leave was scheduled to expire on March 15, 2010.

On March 2, 2010 the claimant provided a doctor's note releasing him to work "as tolerated," but with "no restrictions," although the note "suggested" or "recommended" that the claimant start back on light duty. The claimant brought this note into the employer this same day, preparing to return to work by the end of his leave. He was still using at least one crutch when he came into the employer's facility that day, but the doctor had told him that he should wean himself off crutches. When Mr. Feser, the general manager, observed the claimant he saw that the claimant was still using a crutch; he also concluded that it appeared that the claimant could not

bend his knee. He determined that the claimant could not return to work at that time because of his current use of the crutch and his perceived inability to bend his knee, which Mr. Feser concluded was necessary for the claimant to perform his regular job duties. He therefore told the claimant to seek additional personal leave until such time as he did not need any crutches and could bend his knee.

The claimant did request additional personal leave, but the employer denied the request. Then, since the claimant had not returned to work by the end of the FMLA on March 15, the employer informed the claimant that his employment was ended.

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 instigated the action which directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has instigated the action which directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A mutually agreed-upon leave of absence is deemed a period of voluntary unemployment. 871 IAC 24.22(2)j. However, if at the end of the leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits, and conversely, if at the end of the leave of absence the employee fails to return at the end of the leave of absence and subsequently becomes unemployed the employee is considered as having voluntarily quit and therefore is ineligible for benefits. Id.

Where a claimant has been compelled to leave employment even temporarily due to a medical or health issue not caused or aggravated by the work environment, the claimant is not eligible to receive unemployment insurance benefits until or unless the claimant then recovers, is released to return to work by his physician, and in fact does attempt to return to work with the employer. 871 IAC 24.25(35). Here, the claimant was released to return to work; he did seek to return to work with the employer, but the employer did not accept the release as sufficient. Rather, the employer imposed its own assessment of the claimant's status and condition. However, a statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. 871 IAC 24.22(1)(a). The employer had provided no comparable medical evidence that the claimant's release was not complete, and that he in fact could not have returned to performing his duties without restriction at least as of March 15.

The employer asserted that the claimant was not discharged but that he quit as he was unable to return to work by the end of the leave of absence. The administrative law judge concludes that the claimant did provide a bona fide release that he could return to work without restriction by the end of the leave of absence, but the employer imposed its own interpretation on the situation and declined to accept the release as issued; this was the employer's decision, not the claimant's. The administrative law judge further concludes that therefore 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 and as the employer declined to allow the claimant to return to work after the leave of absence, the separation it must be treated as a layoff or lack of work or a discharge for purposes of unemployment insurance. 871 IAC 24.26(21); 871 IAC 24.22(2)j.

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 absence from work because of the employer's conclusion that the claimant could not perform the functions of his job. 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 May 14, 2010 decision (reference 03) is reversed. The claimant did not voluntarily quit and the employer did effectively 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

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