

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOUG M NOREM
Claimant

APPEAL NO. 11A-UI-02329-PT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SKYWORKS SOLUTIONS INC
Employer

**OC: 01/16/11
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a—Discharge

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 22, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 22, 2011. Claimant participated. Employer participated by Deborah Bunting, Human Resources Representative and was represented by David Williams from TALX.

ISSUE:

The issue in this matter is whether claimant quit for good cause attributable to employer and 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 was employed with the employer from March 3, 2008 through January 17, 2011. Claimant went on a personal medical leave of absence on August 23, 2010. The leaves of absence were extended several times but on January 5, 2011 he was told that he must return to work by January 17, 2011 or be terminated. He did not return to work by January 17, 2011 and his leave was not extended.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5-1-d provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

871 IAC 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.

Claimant did not return from his personal medical leave of absence. However, Iowa Code section 96.5(1)(d) does not require a claimant to return to the employer to offer services after a medical recovery or release if the employment has already been terminated. Porazil v. IWD, No. 3-408 (Iowa Ct. App. Aug. 27, 2003). There is no evidence of misconduct.

DECISION:

The February 22, 2011, reference 01, decision is reversed. Benefits are allowed, provided the claimant is otherwise eligible.

Ron Pohlman
Administrative Law Judge

Decision Dated and Mailed

rrp/css