

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRYAN BABCOCK
Claimant

APPEAL NO. 11A-UI-03649-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CUSTOM-PAK INC – LP2
Employer

OC: 12-05-10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 21, 2011, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on May 2 and continued May 3, 2011. The claimant participated in the hearing. Vicki Rixen, human resources coordinator, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time manufacturing team member for Custom-Pak from June 14, 2010 to November 23, 2010. He sustained what was initially believed to be a work-related injury June 26, 2010. The injury was determined to be non-work-related September 21, 2010. The claimant did not qualify for leave under the Family Medical Leave Act, but he was given a personal leave of absence from October 12, 2010 through November 23, 2010. The employer sent the claimant a letter stating that if he was unable to return at the end of the leave of absence, his employment would be terminated. The claimant was not released to return to work by November 23, 2010, and he was discharged at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

The employer has the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The evidence establishes the claimant was unable to work due to a non-work-related medical condition. When an employee is unable to work and does not return to work due to a non-work-related medical condition, the separation is typically considered to be a voluntary quit without good cause attributable to the employer. Benefits are then denied until the claimant completely recovers and returns to offer his services to the employer. However, in the case herein, the employer took the first step and discharged the claimant for the same reasons. When the employer initiates a separation, the reasons must constitute work-connected misconduct before a claimant can be denied unemployment insurance benefits. Consequently, the administrative law judge concludes the claimant's separation from employment was not due to any misconduct on his part nor did he quit his job. Therefore, benefits are allowed.

DECISION:

The March 21, 2011, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw