

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**COLIN VAN WESTEN**  
Claimant

**APPEAL NO: 12A-UI-02045-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**  
Employer

**OC: 01/15/12**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Non-disqualifying Employment Separation

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's February 20, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant's employment separation ended for non-disqualifying reasons. The claimant participated in the hearing. Mary Eggenburg, a benefit specialist, and Mary Kundert, a pharmacy technician supervisor, appeared on the employer's behalf.

At the beginning of the hearing, the employer clarified that that employer did not dispute that the temporary job the claimant had January 3 through February 1, 2012, ended because the claimant completed the work. As a result, the employer had not appealed this employment separation. The employer appealed because the claimant submitted his resignation on November 2, 2011. This employer asserted this employment separation occurred for disqualifying reasons.

Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

**ISSUE:**

Did the claimant voluntarily quit his employment as a pharmacy technician for reasons that qualify him to receive benefits, or did the employer discharge him for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant started working for the employer on March 4, 2010. The employer hired him to work as a full-time Pharmacy Technician II.

After the employer had concerns with the way the claimant performed some of his job duties, the employer had a job coach work with the claimant until May 10, 2011. The employer was not convinced the claimant could perform his job satisfactorily and gave him a temporary full-time job during the summer of 2011. As of September 4, 2011, the employer placed the claimant on an unpaid leave of absence because the employer concluded the claimant was unable to

perform all the job duties he had been hired to do. The employer told the claimant he had 90 days to decide if he wanted to apply for long-term disability benefits. If the claimant returned to work by June 20, 2012, he would retain his seniority status.

The claimant did not apply for long-term disability benefits. He also learned he had to resign before he could receive money in his retirement fund. On November 2, 2011, the claimant informed the employer he resigned. About the same time the claimant resigned, he had accepted a job with Iowa CVS Pharmacy.

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

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. In this case, the claimant's employment separation occurred on September 4, not November 2, 2011. On September 4, the employer placed the claimant on an unpaid leave of absence. For unemployment insurance purposes the employer initiated the employment separation on September 4. The claimant did not voluntarily quit his employment on September 4.

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).

The employer's decision to place the claimant on an unpaid leave after concluding he was unable to perform his job as a pharmacy technician does not establish that the claimant committed work-connected misconduct. The fact the claimant officially resigned on November 2 so he could withdraw his retirement money does not change his employment separation date from September 4 to November 2. As of September 4, the claimant did not work or earn any wages. As of January 15, 2012, the claimant is qualified to receive benefits because his employment separation on September 4 was for non-disqualifying reasons.

### **DECISION:**

The representative's February 20, 2012 determination (reference 01) is affirmed. The claimant had two employment separations. First, on September 4, 2011, the employer placed him on an unpaid leave of absence because he was unable to perform his job duties. The second employment separation occurred when he completed a temporary job assignment at the employer's book store. Both employment separations occurred for non-disqualifying reasons.

As of January 15, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw