

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID E STURGEON
Claimant

APPEAL NO. 07A-UI-00750-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARTERS LEASING INC
Employer

**OC: 12/17/06 R: 03
Claimant: Respondent (3)**

Section 96.5-2-a – Discharge for Misconduct
Section 96.4-3 – Availability for Work

STATEMENT OF THE CASE:

Carter's Leasing (employer) appealed a representative's January 16, 2007 decision (reference 01) that concluded David Sturgeon (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 6, 2007. The claimant participated personally. The employer participated by Trent Carter, Manager.

ISSUE:

The issue is whether the claimant was discharged for misconduct and whether he is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on January 26, 2005, as a full-time garbage man. In late October 2006, the claimant's feet got wet and his shoes tightened on his feet. The claimant is diabetic and developed a blood blister. He took care of his feet but had to walk through a backed up drain at work. The claimant believes that walking through the drain led to an infection. The claimant was admitted to the hospital. On November 1, 2006, the claimant's big toe on his left foot was amputated. The claimant notified the employer and the employer reported the injury to its workers' compensation insurance carrier. On November 21, 2006, the carrier denied the claim until it had additional medical documentation. The claimant appealed the determination.

On December 16, 2006, the claimant was released to perform light duty work. He reported to his employer. The employer told the claimant that there would be no further work available for him. The claimant filed for unemployment insurance benefits with an effective date of December 17, 2006.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for misconduct.

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 proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer discharged the claimant and has the burden of proof to show misconduct. The employer did not provide any evidence of misconduct at the hearing. The employer terminated the claimant because he suffered a work-related injury. Consequently, the employer did not meet its burden of proof to show misconduct. Benefits are allowed.

The next issue is whether the claimant was able and available for work. For the following reasons, the administrative law judge concludes he is.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness, he is considered to be unavailable for work. The claimant was in the hospital, released, and then allowed to perform light duty work for this employer. The claimant is considered to be available for work at the time he filed for unemployment insurance benefits. The claimant is not disqualified from receiving unemployment insurance benefits.

DECISION:

The representative's January 16, 2007 decision (reference 01) is modified in favor of the respondent. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible. In addition, the claimant is considered to be available for work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw