

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMUEL S REUNEY
Claimant

APPEAL NO. 14A-UI-01724-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHORT STAFFED INC
Employer

OC: 01/12/14
Claimant: Appellant (1-R)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 5, 2014, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on March 7, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing with a witness, Susan Hitt. Julie Klein participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. He was employed on an on-call/as-needed basis for the employer on an assignment at Cloverleaf Cold Storage from November 12, 2013, to December 14, 2013. He was informed and understood that under the employer's work rules, regular attendance was required and employees were required to notify the employer if they were not able to work as scheduled.

The claimant was absent from work without notice on November 29, 2013. He was scheduled to work on December 9, 2013. He missed his ride from the Kum & Go where he was to meet the van to get to the job. He did not call the employer to notify them that he would not be at work. He was warned that he would be terminated if he was absent from work again.

The claimant was scheduled to work on December 15, 2013. He went to the hospital that day to be with his sister. He did not call the employer to inform the employer that he was not going to work. The employer then discharged the claimant for again being absent without notice to the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The unemployment insurance rules provide: "Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer." 871 IAC 24.32(7).

The claimant was absent without notice on two days in November and December. He was given a final warning about his no-call/no-shows on December 12. He again missed work without notifying the employer on December 15. Even if he had a good reason for missing work due to his sister's hospitalization on December 15, he violated the employer's work rules and the warning he received by failing to call in. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case.

The claimant reported during the hearing that he never worked for Derocher Construction, an employer who reported wages for the claimant of \$2,788.00 for second quarter of 2013 and \$6,414.00 for the third quarter of 2013. He also reported that he had not work for the employer during the second quarter of 2013 yet the employer reported \$58.40 for him. He believes this may be a case of identity theft. The matter of investigating this matter is remanded to the Agency.

DECISION:

The unemployment insurance decision dated February 5, 2014, reference 01, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of investigating whether wages were misreported is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css