

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**MARVIN G NEBENDAHL
PO BOX 151
LAMONT IA 50650**

**L A LEASING INC
SEDONA STAFFING
612 VALLEY DR
MOLINE IL 61265**

**Appeal Number: 04A-UI-02380-H2T
OC 02-01-04 R 04
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge/Misconduct
871 IAC 24.32(7) – Absenteeism
Section 96.5-1 – Voluntary Leaving

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 2, 2004, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on March 24, 2004. The claimant did participate. The employer did participate through Colleen McGuinty, Unemployment Benefits Administrator.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a temporary worker for the employer beginning on June 9, 2003. He

was assigned at Allside Manufacturing beginning on June 9, 2003 as a maintenance technician. The claimant became sick and was hospitalized beginning June 24, 2003 through June 27, 2003 when he was released. The claimant dropped off a note with Sedona Staffing on June 30, 2003 indicating that he had been released from work without restrictions. The claimant has contacted Don at Sedona Staffing looking for work since June 30, 2003. The employer denies that he has ever contacted it, yet the claimant indicates he has stopped in on numerous occasions and has called looking for work. Sedona Staffing knew the claimant was without assignment and was released to return to work on June 30, 2003 when he brought in the doctor's note and when he was told that he was discharged from his position at Allside because he was absent due to illness. Since that time, he has not been placed in any other positions by Sedona Staffing, notwithstanding the fact that Sedona knew he was available for work on June 30, 2003 when he brought in his doctor's note releasing him to return to work.

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(7) provides:

(7) Excessive unexcused absenteeism. 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.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982).

Because the final absence for which he was discharged from Allside was related to properly reported illness, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed.

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a lack of work.

Iowa Code Section 96.5-1 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.

Since his assignment at Allside has ended, the employer has not placed him in any other positions, notwithstanding the fact that it was informed of his ability to work and his availability for work on June 30, 2003. The claimant offers the more credible testimony that he has been back to Sedona Staffing on numerous occasions looking for additional assignments but none have been offered to him. Therefore, the separation from Sedona Staffing was attributable to a lack of work by the employer. Benefits are allowed.

DECISION:

The March 2, 2004, reference 02, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

tkh/b