

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN T GALBREATH
Claimant

APPEAL NO. 07A-UI-07384-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES STAFFING SERVICES INC
Employer

OC: 07-01-07 R: 02
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

John T. Galbreath filed a timely appeal from an unemployment insurance decision dated July 27, 2007, reference 02, that disqualified him for benefits upon a finding that he had voluntarily left employment with DES Staffing Services without good cause attributable to the employer. After due notice was issued, a telephone hearing was held August 16, 2007 with Mr. Galbreath participating. Assistant Human Resources Manager Kathy Anderson participated for the employer. Employer's Exhibit One and Claimant's Exhibit A were admitted into evidence. The record was held open through close of business on August 20, 2007.

ISSUES:

Was the claimant discharged for misconduct in connection with his employment?

Did the claimant voluntarily leave employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: John T. Galbreath was a temporary employee of DES Staffing Services, Inc., a temporary employment firm. He was scheduled to work on an assignment on April 3, 2007. The person who was going to provide transportation for Mr. Galbreath on that day was unable to do so because of a family medical emergency. Mr. Galbreath notified DES Staffing Services of this. He was replaced on the assignment. He again contacted DES Staffing Services on April 4, 2007, speaking to Shane, to seek re-assignment. None was available.

DES Staffing Services did not log Mr. Galbreath's call. Their client then called to report that Mr. Galbreath was absent. DES Staffing Services replaced Mr. Galbreath at that time.

REASONING AND CONCLUSIONS OF LAW:

The first step in analyzing this evidence is to characterize the separation. The fact finder concluded that the separation was a voluntary quit. The administrative law judge respectfully

disagrees. In order to find a voluntary quit, the administrative law judge must find that the claimant intended to sever the employment relationship. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980). That intent may be inferred if an individual is absent without contact for three consecutive days in violation of a company rule. See 871 IAC 24.25(4). The claimant's evidence persuades the administrative law judge that the claimant contacted the employer on April 3 and again on April 4, 2007. Furthermore, the employer replaced Mr. Galbreath on the first day. Since the employer initiated the separation, the administrative law judge concludes that it should be characterized as a discharge.

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. See Iowa Code section 96.6-2. While excessive unexcused absenteeism is misconduct, a single unexcused absence is not enough to be considered excessive. See Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989). No disqualification may be imposed.

Some discussion of documentary evidence is in order. The documentary evidence submitted by the employer indicates that Mr. Galbreath abandoned his job. The claimant's sworn testimony contradicts the employer's documentary evidence. Furthermore, a portion of Claimant's Exhibit A is documentation of his subsequent contact with DES Staffing Services, contact which is not reflected in the employer's documents. The administrative law judge finds that the employer's documentary evidence is incomplete and unreliable.

DECISION:

The unemployment insurance decision dated July 27, 2007, reference 02, is reversed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/kjw