

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY J SLAUGHTER
Claimant

APPEAL NO: 11A-UI-13125-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAMBRIDGE TEMPOSITIONS INC
Employer

**OC: 08/28/11
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's September 28, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for nondisqualifying reasons. The claimant participated in the hearing. Elaine Pruett, an account manager, appeared on the employer's behalf. 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 for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working at the Apache job assignment on November 6, 2009. The claimant worked on a drill press.

After the claimant was absent on July 11, 2011, because of chest pain, Pruett talked to him on July 12 about his attendance. Pruett reminded the claimant to watch his attendance and to ask for vacation time before he wanted to take a vacation.

The claimant was absent on July 14, 21, 22, August 1, 2, and 3. These absences were medically related. Since mid-July 2011, the claimant has had problems medical issues.

On August 2, the claimant did not feel well when he went to work at 3:30 p.m. It was very hot outside, 93 degrees, and at work it was 100 degrees. After the claimant felt himself almost pass out at the drill press, he stood by the door of a freezer at work for five or more minutes. The claimant went back to his workstation. After working some more, the claimant again almost passed out. He then found his supervisor and asked if he could go home because he did not feel well. The claimant's supervisor gave him permission to leave work early. While the claimant waited for his wife to pick him up, he sat in the freezer to cool down.

The claimant called his doctor on August 3 for an appointment. The claimant waited for his doctor to call him back about an appointment and to find out if he should go to work. The doctor did not call him back until 5:00 p.m. or later. The claimant did not go to work on August 3 and he did not contact the employer to report he would not be at work.

When the claimant did not report to work on August 3, Apache, asked the employer to remove him from the assignment for on-going attendance issues. Even though the client asked the employer to remove the claimant from the assignment, the employer still considered him eligible to be assigned to another job.

On August 4, the claimant talked to Pruett. He had a heart monitor. Even though his physician released the claimant to return to work on August 5 without any work restrictions, the employer asked the claimant to contact the employer when he no longer had the heart monitor and was healthy and able to work.

The claimant started looking for other work after he established a claim for benefits the week of August 28, 2011. The claimant did not contact the employer because he still experienced some chest pains and had been told not to contact the employer until he was healthy.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. 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).

The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant became unemployed on August 4 when the client, Apache, asked the employer to remove the claimant from their assignment because of the claimant's recent attendance issues. The client had justifiable business reasons for asking the employer to end the claimant's assignment. Even though the claimant used poor judgment when he failed to notify the employer on August 3 that he was unable to work that day, he notified the employer when he had been absent before for medical issues that began in mid-July. Since his absences were medically related, which his physician verified, the claimant did not commit work-connected misconduct. Even though the client did not want the claimant at the assignment any more, the employer considered the claimant eligible to assign to another job. The employer did not want to assign the claimant to a job while he had a heart monitor even though his physician had released him to work. As of August 28, 2011, the claimant is qualified to receive benefits because his job assignment ended in early August for reasons that do not constitute work-connected misconduct.

DECISION:

The representative's September 28, 2011 determination (reference 01) is affirmed. The employer ended the claimant's assignment for business reasons, but the claimant did not commit work-connected misconduct. As of August 28, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css