

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM A LEWIS
Claimant

APPEAL NO. 09A-UI-11857-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**“LF STAFFING SERVICES INC
“LABOR FINDERS**
Employer

**OC: 06/14/09
Claimant: Respondent (2-R)**

Section 96.5-2-a – Discharge/Misconduct
Section 96.3-7 – Benefit Overpayment

STATEMENT OF THE CASE:

Labor Finders filed a timely appeal from a representative’s decision dated August 13, 2009, reference 02, which held claimant eligible for unemployment insurance benefits. After due notice a telephone conference hearing was scheduled for and held on September 1, 2009. Although duly notified, claimant did not respond to the hearing notice and did not participate. The employer participated by Ms. Darci Jackson, Assistant Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits and whether the claimant has been overpaid job insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds: William Lewis was most recently employed by Labor Finders on May 13, 2009. On that date the claimant was assigned to work at the Coralville Marriott facility as a banquet server. Mr. Lewis was discharged based upon his failure to report or to provide any notification to Labor Finders that he would not report as agreed. As the claimant had received a previous specific warning for failure to report or provide notification as required by company policy, he was discharged from employment at that time and is not eligible to be reassigned by Labor Finders.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant was discharged for misconduct sufficient to warrant a denial of unemployment insurance benefits.

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 evidence in the record establishes that the employment separation took place on May 13, 2009. On that date the claimant violated established Labor Finders' policies by agreeing to report for a scheduled assignment but failing to do so without providing any notification or reason to the employer. The claimant was aware of the policy and had previously been specifically warned for violation of that policy. Because of the repetitive nature of his failure to report and provide notification, the claimant was discharged from employment at that time and is not eligible to be reassigned by Labor Finders.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall

be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

DECISION:

The representative's decision dated August 13, 2009, reference 02, is reversed. The claimant was discharged under disqualifying circumstances and is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount, provided that he is otherwise eligible. The issue of whether the claimant must repay the unemployment insurance benefits is remanded to the UIS Division for determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs