

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAWRENCE R STEELE

Claimant

APPEAL NO. 07A-UI-04027-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC

Employer

**OC: 03/11/07 R: 03
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Team Staffing Solutions, Inc. (employer) appealed a representative's April 10, 2007 decision (reference 01) that concluded Lawrence R. Steele (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's employment separation was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 7, 2007. The claimant participated in the hearing. Sarah Fiedler, an administrative human resource assistant, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant registered to work for the employer in May 2006. The employer assigned the claimant to a job on August 3, 2006. This was a temp-to-hire job.

The claimant's supervisor told the claimant he was doing a good job and wanted to hire the claimant as an employee. On August 23, the employer's account manager, Harold Mendez, warned the claimant about calling off from work. On September 1, 2006, the claimant went to the employer's office to pick up his paycheck. The claimant was scheduled to work later that day.

The claimant had some unexpected relatives stop to see him before he was scheduled to work. The claimant had a few drinks with his relatives. The claimant decided he had too much to drink and called the employer to report he was unable to work on September 1, 2006. When the claimant reported to work as scheduled on September 3, he learned he could not work until he talked the employer's account manager. The claimant tried to talk to the account manager, but

was unable to. The claimant indicated he was available for work. The claimant tried for several days to talk to the account manager so he could continue working at the assignment. The claimant did not know Mendez reported the claimant had voluntarily quit his employment by deciding to drink before he went to work and then contacted the employer to report he was unable to work as scheduled on September 1, 2006. The claimant established a claim for unemployment insurance benefits during the week of March 11, 2007.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The claimant notified the employer on September 1, 2006, that he was unable to work as scheduled, but he had no intention of quitting. The employer initiated the employment separation. On September 1, the employer discharged the claimant for drinking before he was scheduled to work and then calling off work.

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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant used poor judgment when he had a few drinks with unexpected company before work. Since the facts do not establish the claimant was discharged for excessive unexcused absenteeism, the evidence does not establish that the claimant intentionally or substantially disregarded the employer's interests. The claimant acted in the employer's best interest when he notified the employer he was unable to work after he had a few drinks with relatives. The employer has the burden to establish the claimant was discharged for work-connected misconduct and this burden remains even though Mendez no longer works for the employer. Based on Mendez's account of what occurred, the claimant did not commit work-connected misconduct. As of March 11, 2007, the claimant is qualified to receive unemployment insurance benefits.

DECISION:

The representative's April 10, 2007 decision (reference 01) is affirmed. The employer discharged the claimant for reasons that do not constitute work-connected misconduct. As of

March 11, 2007, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css