

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

KIMO K FAALAFULA
1207 MEADOW LN APT 3
WATERLOO IA 50701

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

Appeal Number: 04A-UI-03203-DWT
OC 02/08/04 R 03
Claimant: Respondent (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 are 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
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

L. A. Leasing, Inc., doing business as Sedona Staffing (employer), appealed a representative's March 12, 2004 decision (reference 06) that concluded Kimo K. Faalafula (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 16, 2004. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Colleen McGuinty appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer discharge the claimant for work-connected misconduct?

Has the claimant been overpaid any unemployment insurance benefits?

FINDINGS OF FACT:

The employer is a temporary staffing firm. The claimant registered to work for the employer's business clients. The business where the claimant had been working wanted to hire the claimant as a permanent employee. The claimant completed a job application for this business. On the employment application the business asked applicants if they had ever been convicted of a felony. The claimant marked the no on the form. This business does background checks and the claimant signed paperwork authorizing the business to access certain information about the claimant. The background check indicated the claimant had been convicted of a felony, second-degree theft, on August 15, 2003.

When the employer learned about the felony conviction, the employer asked the claimant about it. He denied he had been convicted of a felony. The claimant did not admit his felony conviction until the employer showed him the paperwork verifying he had been convicted of a felony. The claimant then indicated he had not been truthful because he had wanted the permanent full-time job. The business did not hire the claimant.

The employer discharged him and would not assign him any more work because the claimant had not been truthful about his conviction the first time the employer asked him about it. The employer discharged the claimant on February 3, 2004.

The claimant established a claim for unemployment insurance benefits during the week of February 8, 2004. He filed claims for the weeks ending February 14 and 21, 2004. He received his maximum weekly benefit amount of \$134.00 for each of these weeks.

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. 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's failure to be truthful when the employer first asked him about any felony conviction after the background check came back amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The employer discharged the claimant for work-connected misconduct. As of February 8, 2004, the claimant is not qualified to receive unemployment insurance benefits.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the

overpayment. Iowa Code §96.3-7. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending February 14 and 21, 2004. He has been overpaid a total of \$268.00 in benefits he received for these weeks.

DECISION:

The representative's March 12, 2004 decision (reference 06) is reversed. The employer discharged the claimant for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of February 8, 2004. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged. The claimant is not legally entitled to receive unemployment insurance benefits during the weeks ending February 14 and 21, 2004. He has been overpaid a total of \$268.00 in benefits he received for these weeks.

dlw/b