

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHANNON VEAL**  
Claimant

**APPEAL NO. 08A-UI-10629-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AVENTURE STAFFING & PROFESSIONAL  
SERVICES INC**  
Employer

**OC: 09/21/08 R: 01  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

**STATEMENT OF THE CASE:**

Shannon Veal (claimant) appealed an unemployment insurance decision dated November 7, 2008, reference 02, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Aventure Staffing & Professional Services, LLC (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 1, 2008. The claimant participated in the hearing with Attorney Michelle Van Wyhe. The employer participated through Robert Hardy, Human Resources Assistant. 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:**

The issue is whether the employer discharged the claimant for work-related misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant has worked intermittently for this employer since 2001. He most recently started back to work in 2006 and worked through October 2, 2008 when he said he was fired. The claimant had worked for Palmer Candy for two weeks when the employer took him off the assignment and discharged him from employment. The employer witness offered hearsay evidence that the claimant was not discharged from his employment but merely taken off an assignment and failed to check back in for additional work. The claimant admitted he did not check back in for additional work because he had been fired.

**REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the

employer or if the employer discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

The claimant contends he was fired but the employer disputes that contention. The employer witness, who told the claimant he was fired, was not available for testimony. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. Crosser v. Iowa Department of Public Safety, 240 N.W.2d 682 (Iowa 1976). The administrative law judge concludes that the hearsay evidence provided by the employer is not more persuasive than the claimant's credible, sworn testimony to the contrary. The claimant was discharged on October 2, 2008.

Iowa Code § 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 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 employer has not carried its burden of proof to establish that the claimant committed any act of misconduct in connection with employment for which he was discharged. Misconduct has not been established and benefits are allowed.

**DECISION:**

The unemployment insurance decision dated November 7, 2008, reference 02, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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