

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RYAN R ANDREWS
Claimant

APPEAL NO. 07A-UI-08136-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

USA STAFFING INC
Employer

OC: 07/22/07 R: 01
Claimant: Respondent (1)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

USA Staffing, Inc. (employer) appealed a representative's August 22, 2007 decision (reference 04) that concluded Ryan R. Andrews (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant became unemployed for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 10, 2007. The claimant participated in the hearing. Jeff Oswald represented the employer. Jan Enderlin testified 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 qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The employer is a temporary employment firm. The employer assigned the claimant to a temp-to-hire job at Fort Dodge Foods on June 20, 2007. The claimant did not work at this job assignment after June 22, 2007.

After work on June 22, the claimant experienced abdominal pain and went to the emergency room at the local hospital. The treating physician told the claimant he needed a surgical procedure and restricted him from working. The claimant's wife took the doctor's excuse to Fort Dodge Foods. The claimant talked to his supervisor at Fort Dodge Foods and understood his job would be waiting for him after he had a medical procedure completed within the next few days. The claimant had the procedure done the week of June 24.

On June 28, the business-client contacted the employer to report the claimant had not been at work since June 22, 2007. As a result of the claimant's absence, the client no longer needed the claimant's services. When the claimant went to pick up his paycheck, the employer

informed the claimant he no longer worked for Fort Dodge Foods, but the employer would look for another job for the claimant. A week later, the employer contacted the claimant about the possibility of working at Electrolux.

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 facts establish the claimant's assignment at Fort Dodge Foods ended when he became unable to work as the result of a medical condition. The claimant did not voluntarily quit his employment.

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).

Even though the claimant used poor judgment by not contacting the employer when his doctor excused him working a few days, the claimant did not intentionally disregard the employer's interests. The evidence indicates the employer still considered the claimant eligible to assign to other jobs. The claimant is qualified to receive unemployment insurance benefits as of July 22, 2007, because he became unemployed for nondisqualifying reasons.

DECISION:

The representative's August 22, 2007 decision (reference 04) is affirmed. The claimant's assignment at Fort Dodge Foods ended for nondisqualifying reasons. As of July 22, 2007, the

claimant is qualified to receive unemployment insurance benefits based on this employment separation. 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