

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LACY T MOORE

Claimant

APPEAL NO. 13A-UI-08704-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**L A LEASING INC
SEDONA STAFFING**

Employer

OC: 12/16/12

Claimant: Appellant (3)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Lacy Moore filed a timely appeal from a representative's decision dated July 29, 2013, reference 10, which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on September 3, 2013. Claimant participated. The employer participated by Ms. Colleen McGuinty, Unemployment Insurance Administrator and Ms. Nicole Siemsen, Account Manager.

ISSUE:

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

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Mr. Moore was employed by Sedona Staffing and assigned to work as a laborer at the Plant Site Logistics Company from February 6, 2013 until July 2, 2013 when he was discharged. Mr. Moore was scheduled to work full time at the assignment and was being paid by the hour.

Mr. Moore was discharged on July 2, 2013 because he failed to report for scheduled work at the Plant Site Logistics location and did not notify both Plant Site Logistics and Sedona Staffing that he would not be reporting for work. At the time of hire, employees are informed of the necessity of notifying both Sedona Staffing and the client employer if they are unable to report for work. In the past, Mr. Moore had provided notification to Sedona Staffing if he was going to be absent from work.

On the morning of July 2, 2013, Mr. Moore was scheduled to begin work at the client location at 7:30 a.m. In route to work the claimant was stopped by the police and arrested because of registration issues with the vehicle he was driving. Mr. Moore was released from jail at approximately 10:30 a.m. and at that time noted that Sedona Staffing had attempted to call him earlier that morning. The temporary employer had called Mr. Moore to determine why he had not reported for scheduled work or provided notification of his impending absence that day.

After the claimant had not reported for work at the client location and had not provided any reason to either Sedona Staffing or the client, the client informed Sedona Staffing that they would no longer allow Mr. Moore to work at their location. The client employer cited the claimant's poor attendance history during the assignment and his failure to provide notification on July 2, 2013 as the reasons for no longer allowing Mr. Moore to return to employment at their client location. When the claimant called Sedona Staffing shortly after 10:30 a.m., he was informed that he had been discharged because of his attendance and failure to provide notification that day.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The employer has the burden of proof in this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

In this matter the claimant was discharged from his assignment at Plant Site Logistics because he had been excessively absent in the past and the client was no longer willing to allow Mr. Moore to work at their location because of his past attendance and his failure to report for work or provide required notification as to why he was not reporting on the morning of July 2, 2013. Mr. Moore was aware that he had at least to personally notify Sedona Staffing of any impending absences and had the ability to do so prior to being arrested on that morning. A claimant's failure to report for work was inextricably tied to his being stopped by the police, ticketed and temporarily incarcerated because of improper paperwork related to the vehicle that he was driving. When the claimant's inability to report to work is caused by his or her conduct causing that person to be detained or arrested, the reason for the absence is considered to be self-inflicted and disqualifying. Cook v. Iowa Department of Job Service, 299 N.W.2d 698 (Iowa 1980). Because the claimant had been excessively absent in the past and his final absence was unexcused and not properly reported, the administrative law judge concludes that the employer has sustained its burden of proof in establishing that Mr. Moore's discharge took place under disqualifying conditions. Unemployment insurance benefits are withheld.

DECISION:

The representative's decision dated July 29, 2013, reference 10, is affirmed as modified. The portion of the determination disqualifying the claimant from receiving benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and is otherwise eligible is affirmed. The portion of the determination finding that the claimant voluntarily quit employment is modified to find that the claimant was discharged under disqualifying conditions.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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