

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMY S BROSDAHL
Claimant

APPEAL NO: 12A-UI-09910-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES - MARSHALLTOWN
Employer

OC: 07/01/12
Claimant: Respondent (1-R)

Section 96.5-2-a – Discharge
871 IAC 24.32(1) – Definition of Misconduct
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The employer appealed a department decision dated August 6, 2012, reference 01, that held the claimant was not discharged for misconduct on February 9, 2012, and which allowed benefits. A telephone hearing was held on September 10, 2012. The claimant participated. Nancy Mullaney, branch manager, participated for the employer.

ISSUE:

Whether the claimant was discharged for misconduct in connection with employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on assignment at Priority Plastics beginning January 15, 2012, and last worked for the employer as a full-time production employee on February 9. Claimant suffered a seizure while at work and was taken to a hospital for examination. He put on his employment application that he had a seizure history due to epilepsy. The employer removed claimant from the work assignment because it had a concern for his safety due to the seizure. The claimant was offered no further employment.

REASONING AND CONCLUSIONS OF LAW:

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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on February 9, 2012.

The employer discharged claimant for a health issue that it knew about at the time of hire, due to the epilepsy application disclosure. It removed him from the work assignment for the health issue, which is not a termination for any act of misconduct. It had no medical information to base the decision to terminate the assignment as a safety risk anymore than it had to place claimant on assignment in the first place.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Since claimant has a diagnosis of epilepsy with a seizure history, there is an issue as to whether he is able and available for work. This issue is remanded to Claims for a department fact-finding where claimant is to provide medical information about whether he can work some gainful employment.

DECISION:

The department decision dated August 6, 2012, reference 01, is affirmed. The claimant was not discharged for misconduct on February 9, 2012. Benefits are allowed, provided the claimant is otherwise eligible. The able and available issue is remanded.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw