

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHAN S BROCKERT
Claimant

APPEAL NO: 12A-UI-04319-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

**OC: 06/12/11
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed a department decision dated April 9, 2012, reference 03, that held the claimant was not discharged for misconduct on March 15, 2012, and benefits are allowed. A telephone hearing was held on May 8, 2012. The claimant participated. Sarah Fiedler, Claims Administrator, 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 a temp-to-hire work assignment for HON Company on October 31, 2011, and last worked on March 14, 2012. He worked a full-time forklift driver job. Claimant was advised he was eligible for employment after working 90 days. HON has a policy that 3 absences for a temp employee is grounds for dismissal.

Claimant's wife was pregnant and he missed two workdays to care for her leading up to March 15. He overslept and realized he would be late to work. He called the employer to explain what happened and he was told not to report for work at HON.

The employer has a record claimant signed-up for work on March 22 and that he attempted to get work at ALL Steel where he had previously worked through the employer. Recently, the claimant accepted the employer offer for a work assignment at Trinity Supply where he started on May 4, and continues to work there through the date of this hearing.

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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on March 15, 2012.

The employer's information is suspect based on a lack of first hand testimony from the representatives who dealt with claimant and lack of documentation as to all of its information regarding the account. Claimant experienced an "interruption" from employment rather than a voluntary quit due to an absenteeism issue at HON. It is reasonable to believe he was told not to report for work because the representative knew a third absence incident would mean assignment termination.

The fact the employer allowed claimant to sign-in for work only a week after the HON assignment ended, offered him further work and re-assigned him on May 4 is not consistent with a voluntary quit. Claimant wanted work and pursued it when the HON assignment ended.

DECISION:

The department decision dated April 9, 2012, reference 03, is affirmed. The claimant was not discharged for misconduct on March 15, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css