

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROLANDO ALMENDAREZ
Claimant

APPEAL NO. 07A-UI-11160-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM SERVICES INC
Employer

**OC: 10/28/07 R: 01
Claimant: Appellant (1)**

Section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

Rolando Almendarez filed an appeal from a representative's decision dated November 27, 2007, reference 02, which held he had been discharged by Team Services, Inc. for misconduct. After due notice was issued, a hearing was held by telephone on December 19, 2007. Mr. Almendarez participated personally. The employer participated by Mike Aschero, Manager.

ISSUE:

At issue in this matter is whether Mr. Almendarez was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Almendarez was employed by Team Services, Inc. from January 22 until October 29, 2007 as a full-time technician. The employer provides engineering testing for the construction industry. Mr. Almendarez was discharged because of his attendance.

On the afternoon of October 1, Mr. Almendarez was notified that he was scheduled to work at 2:00 a.m. on October 2 at the job site in Fort Dodge, Iowa. It was his turn to work early morning hours due to a concrete pour scheduled for that day. On his way home from work on October 1, Mr. Almendarez notified his supervisor that his truck had broken down. The employer offered to put him up in a motel in Fort Dodge where a coworker was staying but Mr. Almendarez declined the offer. The employer also advised him that he could take a company vehicle so that he would be at work at 2:00 a.m. as scheduled. Mr. Almendarez did not take the company vehicle and did not report for work. There were no problems with the vehicle the employer offered as another individual was able to drive it to the job site without any difficulty. As a result of his failure to report for work as scheduled on October 2, Mr. Almendarez received a written warning on October 10.

On the afternoon of October 24, Mr. Almendarez asked to have October 25 off to pick his mother up at the airport in Sioux City. Because work was busy, he was asked to report to work

after picking up his mother and agreed to do so. He did not report for work after picking up his mother and did not contact the employer to advise he would not be there. On the evening of October 25, the supervisor contacted Mr. Almendarez by telephone and told him his services would be needed the following day. Mr. Almendarez indicated he had a doctor's appointment but would report to work after the appointment. He did not report for work or contact the employer on Friday, October 26. He was notified of his discharge the following Monday, October 29, 2007.

REASONING AND CONCLUSIONS OF LAW:

An individual who was discharged from employment is disqualified from receiving job insurance benefits if the discharge was for misconduct. Iowa Code section 96.5(2)a. The employer had the burden of proving disqualifying misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). For reasons that follow, the administrative law judge concludes that disqualifying misconduct has been established by the evidence. Mr. Almendarez failed to report for scheduled work on October 2. After his truck broke down, he had the option of staying in a motel or taking a company vehicle so that he could be at the job site at 2:00 a.m. as required. Mr. Almendarez declined both offers and did not report for work. Based on the warning he received on October 10, he knew or should have known that his continued employment was in jeopardy.

Mr. Almendarez knew on October 24 that he was expected to report to work after picking his mother up at the airport on October 25. However, he did not go to work or notify the employer that he would not be coming in. He also told the employer on October 25 that he would report to work after his doctor's appointment on October 26 but did not do so. He again failed to notify the employer that he would not be at work. Mr. Almendarez knew work was busy and that his services were needed on both October 25 and October 26. His failure to report for work as promised on two consecutive days constituted a substantial disregard of the standards the employer had the right to expect. His actions hampered the employer's ability to plan and distribute work.

Mr. Almendarez contended that he was given permission on October 10 to be gone the entire day on both October 25 and 26. However, the administrative law judge did not find his testimony in that regard credible. The credibility determination is based on his testimony concerning his work activities the week of September 24 through September 28. Mr. Almendarez testified that he worked 25 hours that week and that he worked some portion of each day. He testified that he worked eight hours on September 27 and eight hours on September 28. He testified that he spent the 25 hours driving and walking around the job site talking to various people about the job.

The administrative law judge is not inclined to believe Mr. Almendarez would drive from Storm Lake to Fort Dodge and back each workday only to spend time talking with people about the job. The administrative law judge is less inclined to believe that he would spend eight hours on each of two days walking around talking to people about the job. The employer testified that the group Mr. Almendarez was assigned to that week shut down for the week. The employer's records reflect no hours submitted by Mr. Almendarez for the week. Given his testimony regarding the week in September, the administrative law judge is not inclined to believe Mr. Almendarez' testimony regarding October 25 and October 26.

For the reasons stated herein, the administrative law judge concludes that the employer has satisfied its burden of proving disqualifying misconduct. Mr. Almendarez accumulated two consecutive periods of unexcused absenteeism, October 25 and 26, after receiving a written

warning regarding attendance on October 10. Inasmuch as misconduct has been established, benefits are denied.

DECISION:

The representative's decision dated November 27, 2007, reference 02, is hereby affirmed. Mr. Almendarez was discharged for misconduct in connection with his employment. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly job insurance benefit amount, provided he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

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