

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID W STEPHENSON
Claimant

APPEAL NO. 07A-UI-08135-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

USA STAFFING INC
Employer

OC: 01/14/07 R: 02
Claimant: Respondent (1/R)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

USA Staffing, Inc. (employer) appealed a representative's August 20, 2007 decision (reference 02) that concluded David W. Stephenson (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant's employment was 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. Kerri Green, the branch manager, 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 do not qualify him to receive unemployment insurance benefits, or did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The employer is a temporary and temp-to-hire staffing firm. The employer assigned the claimant to a job at Jacobson Warehouse on May 5, 2007. The claimant's last day of work at this assignment was June 12, 2007. The claimant earned \$9.50 an hour at this job. The claimant reported a work-related injury and was restricted from working until July 10, 2007.

On July 10, the claimant's treating physician released the claimant to work full time at a light-duty job. The claimant could not lift more than ten pounds and could not stand for a prolonged time. With the July 10 work restrictions, the claimant was unable to work the job he had at Jacobson Warehouse. The employer offered the claimant a job as a telemarketer.

At the telemarketer job, the claimant would have flexible hours and could earn between \$9.50 and \$7.00 an hour. The claimant was only available to work 9:00 a.m. to 5:00 p.m. During these hours the claimant could have earned \$7.00 an hour. The claimant did not accept this job assignment. Within days, the claimant learned the employer's worker's compensation carrier

denied the claimant's worker's compensation claim. The claimant's attorney advised the claimant not to have any further contact with the employer because of on-going legal problems with the employer.

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 claimant became unemployed when he was treated for an injury and was then restricted to light-duty work. The claimant's most recent job assignment at Jacobson Warehouse was not a light-duty job. The claimant became unemployed when he was could not perform his work at Jacobson Warehouse. The claimant's unemployed status occurred when the employer had to take him off this assignment.

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).

The claimant's assignment at Jacobson Warehouse ended for nondisqualifying reasons. Therefore, as of July 22, when he reopened his claim, the claimant is qualified to receive unemployment insurance benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

The issue of whether the claimant is eligible to receive benefits because he refused the employer's July 10 offer of light-duty work is remanded to the Claims Section to review and issue a written decision.

DECISION:

The representative's August 20, 2007 decision (reference 02) is affirmed. The claimant's assignment at Jacobson Warehouse ended because he was unable to perform the work. As a result, the claimant's employment separation from this assignment ended for nondisqualifying reasons. Based on this employment separation, the claimant is qualified to receive unemployment insurance benefits as of July 22, 2007, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be

charged. An issue of whether the claimant refused the employer's offer of light-duty work on July 10, 2007, is remanded to the Claims Section to review and issue a written decision.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css