

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREGORY N HAYES
Claimant

APPEAL NO. 09A-UI-02676-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAMBRIDGE TEMPOSITIONS INC
Employer

OC: 01/11/09
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

Gregory Hayes filed a timely appeal from the representative's February 13, 2009, reference 02, decision that denied benefits based upon his separation from Cambridge Tempositions, Inc. After due notice was issued, a telephone conference hearing was scheduled for and held on March 16, 2009. Mr. Hayes participated personally. Participating on behalf of the claimant was Mr. Thomas Currie, Attorney at Law. The employer participated by Stephanie Matteson, Account Manager.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct in connection with his work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered the evidence in the record, finds: The claimant, Gregory Hayes, was assigned to a long-term temporary work assignment through Cambridge Tempositions to the client employer, Quality Chef, beginning in August 2007. Subsequently Mr. Hayes was temporarily removed from the assignment at Quality Chef and assigned to work in cleanup operations for another client employer. While performing cleanup work, Mr. Hayes sustained a workers' compensation injury and was subsequently diagnosed as having a brain tumor. The claimant underwent treatment for his workers' compensation injury and also underwent surgery to remove the majority of the tumor.

On August 31, 2008, the claimant was assigned back to production work at Quality Chef and continued performing those duties until September 17, 2008 when he was unexpectedly sent home from his work assignment by an individual at Quality Chef who informed the claimant that he was "not supposed to be here." Mr. Hayes did not understand why he had been removed from the temporary assignment and waited for Cambridge Tempositions to contact him for a new work assignment. The claimant was not aware that he was expected to contact the temporary employment service if an assignment had ended and believed that he would be contacted by the temporary service if additional work was available to him.

It is the claimant's belief that he was removed from the most recent temporary assignment because the temporary service did not wish to employ him because of his previous workers' compensation injury.

REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether the evidence establishes that Mr. Hayes chose to quit his employment with Cambridge Tempositions, Inc. It does not.

The evidence in the record establishes that Mr. Hayes reported for work on September 17, 2008 intending to perform his duties as usual but that the claimant was unexpectedly removed from the assignment by a Quality Chef management person who informed the claimant he was "not supposed to be here." Based upon the claimant's understanding, the administrative law judge concludes that Mr. Hayes reasonably believed that he was being removed from the assignment.

The question then becomes whether the employer has sustained its burden of proof in establishing disqualifying conduct on the part of the claimant. It has not. The evidence in the record establishes that the claimant was given no reason for being removed from the work assignment either by the client employer or by Cambridge Tempositions, Inc. The claimant was not aware that he had an obligation to contact the temporary employment service for additional assignments. The claimant, therefore, went home as directed and waited for the temporary service to contact him with more work as may have taken place earlier when the claimant had been assigned by the temporary service to different work during flood cleanup.

In the case at hand the employer relies solely on hearsay. Although hearsay is admissible in administrative proceedings, it cannot be accorded the same weight as sworn direct testimony. Based upon the claimant's sworn testimony, the administrative law judge concludes that the claimant reasonably believed that he was being discharged from employment without cause and that the claimant was unaware that he had any obligation to have further contact with the temporary employment service.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant was separated due to lack of work. No intentional disqualifying misconduct has been shown. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated February 13, 2009, reference 02, is reversed. The claimant was separated due to lack of work under non disqualifying conditions. Benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs