

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ELBERT J STOKES

Claimant

APPEAL NO. 11A-UI-07734-L

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC

Employer

OC: 04/03/11

Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1)j – Voluntary Leaving (Temporary Assignment)

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 2, 2011 (reference 01) decision that denied benefits. After due notice was issued, a hearing was held on July 12, 2011, in Des Moines, Iowa. Claimant participated. Employer did not respond to the hearing notice instructions and did not participate.

ISSUE:

The issue is whether claimant voluntarily left the employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time laborer from March 12 through March 14, 2011. He was assigned to hold liquidation sale signs for a jewelry store in Valley West Mall in West Des Moines. When he initially went to the store to retrieve the signs with coworkers, the store manager told him he did not want “more than one Black person in the store at a time.” Claimant is diabetic and later that day he sat down to take his insulin on a break, and because of that was told the assignment business did not need him any longer on March 13, so he left the work site. He returned to Labor Ready on March 14 to seek other work, but none was available and he was told not to enter the premises again. He was discharged from employment with Labor Ready because he had allegedly walked off the job the day before. He was also denied an assignment for LexisNexis on March 15, 2011. (Claimant’s Exhibit A)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy; but, if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. The conduct for which claimant was discharged was because he left a job assignment site when told to do so. This is not misconduct. Benefits are allowed.

DECISION:

The June 2, 2011 (reference 01) decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. The benefits withheld shall be paid to claimant.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw