

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER D HICKEY
Claimant

APPEAL NO: 13A-UI-05624-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 04/07/13
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.5(1) – Voluntary Quit

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's May 10, 2013 determination (reference 03) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant's employment ended for nondisqualifying reasons. The claimant participated at the hearing. Michael Payne appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits as of April 7, 2013.

ISSUE:

Did the claimant voluntarily quit his employment without good cause, or did the employer discharge him for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

When the claimant registered to work for the employer's clients in early February 2013, he completed a medical questionnaire. On February 4, 2013, the claimant indicated he did not have any allergies that could affect his job performance. (Employer Exhibit One.)

After the claimant was released from an assignment at IDFI on April 4, 2013, he went to the employer's office on April 5. The employer then offered him a job at Thermo Bond Buildings. The claimant accepted this job assignment and worked one day.

The day the claimant worked at Thermo Bond Buildings, he told co-workers he wore long-sleeved shirts because fiberglass irritated his skin. A Thermo Bond Buildings' manager talked to the claimant about his skin irritation when in contact with fiberglass. At the end of the day, a Thermo Bond Buildings' manager told the claimant that he was not needed after this day. The claimant understood Thermo Bond Buildings considered the claimant a liability risk for a heat stroke because he had to wear long-sleeved shirts even in the summer because this job required the claimant to work with fiberglass.

The next day the claimant went to the employer's office and asked about another job assignment. The claimant understood the employer would send his application to Wells Blue Bonny and Finco. The claimant has continued to contact the employer once a week about a new assignment. Even though the employer's data base records do not show that any applications have been forwarded to any other client, the claimant has been told by M. that she has sent his applications to at least three clients including, Smithco, for a welding position.

The claimant established a claim for benefits during the week of April 7, 2013.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. A claimant, who is a temporary employee of a temporary employment firm, may be disqualified from receiving unemployment insurance benefits if he does not notify the temporary employment firm within three working days after completing the job assignment in an attempt to obtain another job assignment. To be disqualified from receiving benefits, at the time of hire the employer must advise in writing about the three-day notification rule and that a claimant may be disqualified from receiving unemployment insurance benefits if he fails to timely notify the employer a job has been completed. Iowa Code § 96.5(1)j.

When a claimant has been discharged, the law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. 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 do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

This case must be decided on a credibility issue. The employer testified the claimant quit the assignment at Thermo Bond Buildings. The employer's data base indicates a Thermo Bond Buildings' supervisor reported the claimant quit because of the skin irritation he had from fiberglass. The claimant testified that a Thermo Bond Buildings' supervisor told him he could not work at this assignment because this client was afraid he would suffer from a heat stroke when he wore long sleeves during the summer months. While this administrative law judge understands why the employer relied on information from a person who did not testify at the hearing, the employer relied on unsupported hearsay information. The claimant's testimony is credible and must be given more weight than the employer's reliance on hearsay information. As a result, the evidence does not establish that the claimant voluntarily quit his assignment at Thermo Bond Buildings. Instead, Thermo Bond Buildings ended the claimant's job assignment with them for nondisqualifying reasons.

Even though the employer's position was that the claimant quit and was not discharged, the employer presented Employer Exhibit One where the claimant reported he did not have any allergies. The employer inferred that the claimant had not been honest when he completed this questionnaire on February 4, 2013. The claimant explained that he was not allergic to

fiberglass. Fiberglass only irritated his skin to the extent that he covered his hand and arms to prevent skin irritation. Even if the employer had discharged the claimant, the claimant established that he did not intentionally misinform the employer about any medical conditions because the claimant did not consider himself to be allergic to fiberglass. At most the claimant made a good faith error in judgment based on his understanding of what amounts to an allergy.

Since the employer asserted the claimant had voluntarily quit, he was not eligible to be assigned to another assignment for 90 days. Even though the employer's data base did not indicate applications had been sent to at least three clients after April 5, M. told the claimant several times his application had been sent to employers. The claimant had no understanding the employer was unable to assign him to another job for 90 days.

Since the claimant did not quit and was not discharged for work-connected misconduct, he was required to timely contact the employer for another job assignment. The claimant established he contacted M. the day after his Thermo Bond Buildings' assignment ended. Based on the evidence presented during the hearing, the claimant is qualified to receive benefits as of April 7, 2013.

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.

DECISION:

The representative's May 10, 2013 determination (reference 03) is affirmed. The claimant's assignment ended for nondisqualifying reasons. After the claimant's assignment at Thermo Bond Buildings ended, he timely contacted the employer for another assignment. For unemployment insurance purposes the claimant is qualified to receive benefits as of April 7, 2013, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css