

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GREGORY A LEWIS SR
Claimant

APPEAL NO. 10A-UI-03789-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

STAFFING PROFESSIONALS LLC
Employer

OC: 06/10/07
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 5, 2010, reference 04, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on April 22, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. Stacey Navarro participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The claimant worked for the employer from June 25, 2009, to January 1, 2010. The final work assignment involved working for Dan Sethi, the owner of Staffing Professionals LLC, as a carpenter on Sethi's residence. Robert McFadden was the job foreman.

McFadden needed to be at the job site for the crew to work on the house because he had the security code to get into the house. The claimant was prepared to work on January 4 and 5, but McFadden was sick and McFadden called off work on both days. The claimant notified Sethi about this, and Sethi later left voice mail messages for the claimant stating that he would find out from McFadden what was going on and get back to the claimant. McFadden did not show up on January 6 or 7 either. On January 7, Sethi had allowed the other employees into the house to work. When the claimant reported to work that morning, the employees told the claimant that Sethi had told them not to allow the claimant into the house until he had talked to Sethi.

The claimant called Sethi, but Sethi did not answer. The claimant then borrowed another employee's cell phone to call Sethi, and Sethi answered. Sethi instructed the claimant not to report back to work until Monday, January 11.

The claimant reported to work as scheduled on January 11. McFadden was there and told the claimant that they were going to have to let him go. The claimant then contacted Sethi, and Sethi said he was just fed up with everything and was letting him go.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The evidence originally presented by Ms. Navarro was the claimant had failed to contact the employer within three days to request a new work assignment starting on January 11, but later presented evidence that Sethi had discharged the claimant after he was a no-call/no-show for three days starting January 12. This undercuts the reliability of the information provided by Navarro, who had no personal knowledge of what happened. The claimant's testimony was believable and entitled to more weight.

No willful and substantial misconduct has been proven in this case. The days the employer contends were no-call/no-show days were days that the claimant was unable to work due to his foreman's absence from work or because Sethi told him to go home.

DECISION:

The unemployment insurance decision dated March 5, 2010, reference 04, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css