

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CURTIS L PENTON**  
Claimant

**APPEAL NO. 10A-UI-04685-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**  
Employer

**Original Claim: 01/10/10  
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

The claimant appealed a representative's March 18, 2010 decision (reference 02) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. A telephone hearing was held on May 4, 2010. The claimant responded to the hearing notice but was not available for the hearing. Jack Willis, the claimant's landlord, testified on the claimant's behalf. Scott McKenzie, an unemployment insurance specialist, appeared on the employer 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 qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

**FINDINGS OF FACT:**

On July 9, 2009, the employer placed the claimant at Cardinal for an on-going assignment. The claimant worked primarily first shift. The last day the claimant worked was February 22, 2010.

The claimant did not report to work as scheduled at Cardinal on February 23, 2010. The claimant did not call the employer or Cardinal before his shift started to let either know he was unable to work that day. The claimant was scheduled to start work at 7:00 a.m. The employer's policy informed the claimant he was required to contact the employer an hour before his shift started when he was unable to work as scheduled. The claimant called the employer about 3:30 p.m. and asked to be taken off first shift because he had problems getting up that early. Before the claimant called, Cardinal had already requested that he be removed from the job assignment.

The claimant's job was not in jeopardy prior to February 23. He did not have any attendance issues before February 23. When the claimant called the employer at 3:30 p.m., he did not indicate he was ill. The claimant's landlord saw him on February 23 and the claimant appeared

ill. The employer would have assigned the claimant to another job, but the employer did not have another job for the claimant.

#### **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. The facts establish the client ended the claimant's assignment after he failed to call or report to work one day, February 23, 2010.

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).

Since the claimant's job assignment was not in jeopardy before February 23, 2010, and he did not have an attendance problem before, the claimant's failure to call or report to work one day does not rise to the level of work-connect misconduct. The employer had no choice but to end the claimant's assignment after the client asked the claimant be removed from their job. The employer ended the claimant's job assignment for justifiable business reasons. The evidence does not establish that the claimant committed work-connected misconduct. As of February 21, 2010, the claimant is qualified to receive benefits.

#### **DECISION:**

The representative's March 18, 2010 decision (reference 02) is reversed. The claimant did not quit, instead the employer discharged him after the client asked the employer to remove him from the assignment. The employer ended the claimant's job assignment for business reasons. The isolated incident on February 23, when the claimant did not call or report to work, does not rise to the level of work-connected misconduct. As of February 21, 2010, the claimant is qualified to receive benefits.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw