

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RUSSELL K KUTCHER
Claimant

APPEAL NO. 13A-UI-13780-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC.
Employer

OC: 01/13/13
Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Russell Kutcher filed a timely appeal from the December 13, 2013, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on January 9, 2014. Mr. Kutcher participated. Sarah Fiedler represented the employer. The administrative law judge took official notice of the administrative file documents submitted for or generated in connection with the fact-finding interview.

ISSUE:

Whether Mr. Kutcher separated from the employment for a reason that disqualifies him for benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Team Staffing Solutions is a temporary employment agency. On November 18, 2013, the employer placed Russell Kutcher in a full-time, temp-to-hire, work assignment at Foam Fabricators. Mr. Kutcher last performed work in the assignment on Friday, November 22, 2013. The assignment did not involve heavy lifting. On Monday, November 25, 2013, Mr. Kutcher notified team staffing Branch Manager Kayla Anderson that he had gone to the emergency room in Fort Madison in response to a suspected hernia and that he had been referred to the University of Iowa Hospitals and Clinics (UIHC) for evaluation and treatment. The emergency room had declined to provide evaluation or treatment to Mr. Kutcher because his insurance would only cover evaluation and treatment at UIHC. Mr. Kutcher told Ms. Anderson that he had an appointment set up with the UIHC on November 27, 2013. Though the note from the emergency room did not provide medical restrictions, both parties understood that Mr. Kutcher would be off work until he was seen at the UIHC. Mr. Kutcher was seen at the UIHC on November 27, 2013 and was diagnosed with an umbilical hernia. The doctor at the UIHC did not impose medical restrictions and joked with Mr. Kutcher that he would be okay so long as he did not lift 2,000 pounds. The doctor released Mr. Kutcher to return to work. After Mr. Kutcher had his appointment at the UIHC on November 27, 2013, he presented a medical excuse to Ms. Anderson that same day. The medical excuse indicated only that Mr. Kutcher had been seen that day and should be excused from work that day. The medical excuse provided no

medical restrictions. Ms. Anderson did not make a copy of the document. Mr. Kutcher and Ms. Anderson knew that Mr. Kutcher had a follow up appointment on December 3, 2013. Mr. Kutcher and Ms. Anderson did not discuss whether Mr. Kutcher should remain off work until the December 3 appointment, but that is what happened. On December 3, Mr. Kutcher saw the doctor for a follow up appointment. Mr. Kutcher learned that day that he would need to undergo hernia repair surgery on December 27. The doctor did not impose any medical restrictions pending surgery. On December 3, Mr. Kutcher presented a note from the doctor excusing him from work that day. The document contained no medical restrictions. Ms. Kutcher asked to return to work for his shift that evening. Ms. Anderson declined to allow Mr. Kutcher to return to the assignment and commented that it was only three weeks until his hernia repair. The parties participated in a fact-finding interview on December 12, 2013. The employer at that time raised the issue that it did not have documentation clarifying whether Mr. Kutcher had any medical restrictions. Mr. Kutcher contacted his doctor and obtained a document that indicated he was released to return to work without restrictions. Mr. Kutcher provided the note to Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The administrative law judge notes that the employer did not present testimony from Ms. Anderson and elected instead to present only hearsay evidence.

In Wills v. Employment Appeal Board, the Supreme Court of Iowa held that an employee did not voluntarily separate from employment where the employee, a C.N.A., presented a limited medical release that restricted the employee from performing significant lifting, and the employer, as a matter of policy, precluded the employee from working so long as the medical restriction continued in place. See Wills v. Employment Appeal Board, 447 N.W.2d 137 (Iowa 1989). In Wills, the Court concluded that the employer's actions were tantamount to a discharge.

Mr. Kutcher is in a stronger position than Ms. Wills was. Mr. Kutcher had no medical restrictions. Despite the fact that the doctor who was following Mr. Kutcher had imposed no medical restrictions, the employer elected not to allow Mr. Kutcher to return to work on December 3, 2013 when he made the specific request to do so. In so doing, the employer discharged Mr. Kutcher from the employment. The discharge was not based on misconduct and would not disqualify Mr. Kutcher for unemployment insurance benefits. See Iowa Code section 96.5(2)(a) (regarding discharges for misconduct) and 871 IAC 24.32(1)(a) (regarding the definition of misconduct). Mr. Kutcher is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The Agency representative's December 13, 2013, reference 02, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs