

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK A CARTER
Claimant

APPEAL NO: 12A-UI-00596-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

OC: 01/09/11
Claimant: Appellant (5)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's January 13, 2012 determination (reference 02) that disqualified him from receiving benefits and held the employer's account exempt from charge because he voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated in the hearing. Sarah Fiedler appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits or did the employer discharge him for reasons constituting work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 20, 2011. The employer assigned the claimant to a job at Winegard. The claimant's shift started at 6:00 a.m.

During his employment, the claimant accumulated 17 attendance occurrences. On November 18 the employer gave him a verbal warning for excessive absenteeism. From November 18 through December 12, the claimant was late once, did not call or report to work one day and was absent a day for a family emergency. On December 12, the employer gave the claimant a written warning for excessive absenteeism. The employer warned the claimant on December 12 that his failure to correct his attendance issues would result in termination from Winegard.

On December 19, the claimant did not report to work or properly notify the employer he was unable to work. Before noon on December 19, Winegard personnel contacted the employer to report the claimant was a no-call/no-show that day. After the claimant was reported as a no-call/no-show he left a message on Winegard's phone indicating he was unable to work that day. The employer's records indicate the claimant called Winegard around noon. The employer decided to end his work assignment at Winegard on December 19 for excessive absenteeism.

The claimant reported to work on December 20, 2011. The Winegard supervisor on duty did not know the employer had decided to end the claimant's assignment and no one pulled his timecard. On December 20, the claimant worked until the end of his shift. When he finished his shift, the employer told him he was terminated from this assignment for on-going attendance issues.

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. An individual who is a temporary employee of a temporary employment firm may be disqualified from receiving unemployment insurance benefits if the individual 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 the individual in writing of the three-day notification rule and that the individual may be disqualified from receiving unemployment insurance benefits if he fails to notify the employer. Iowa Code § 96.5(1)j.

The facts do not establish that the claimant intended to quit his employment. Even though he did not work as scheduled on December 19, he went to work and worked on December 20. The claimant did not quit this assignment.

The employer asserted the claimant quit under Iowa Code § 96.5(1)j because he has not asked for another assignment after he was terminated from the Winegard assignment. This law applies to claimants who have completed a job assignment, not to claimants who quit or were terminated before the assignment was completed.

The facts establish the employer discharged the claimant for excessive absenteeism. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The claimant asserted he was in a hurry to get to the hospital the morning of December 19. This may be true, but he had just received a written warning that he needed to improve his attendance. Even if the claimant did not have his phone, a family member could have looked up Winegard's and the employer's phone numbers to let them know the claimant was unable to work and that he was in the hospital. This did not happen. The claimant asserted he was at the emergency room on December 19, but his assertion was not supported by any doctor's statement, hospital bill or testimony of a family member who allegedly went with him to the hospital. The evidence establishes the claimant did not contact Winegard until noon even though he testified he left the hospital between 9 and 10 a.m. The claimant failed to properly report his December 19 absence even after he had been warned on December 12 that his job was in jeopardy for excessive absenteeism.

The employer discharged the claimant for reasons constituting work-connected misconduct. As of December 20, 2011, the claimant is not qualified to receive benefits.

DECISION:

The representative's January 13, 2012 determination (reference 02) is modified, but the modification has no legal consequence. The claimant did not quit. Instead, the employer discharged him for reasons constituting work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of December 20, 2011. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css