

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID WARD
Claimant

APPEAL NO: 08A-UI-04411-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

**OC: 04-06-08 R: 03
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 29, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 21, 2008. The claimant participated in the hearing. Sarah Fieldler, Administrative Assistant, participated in the hearing on behalf of the employer. Claimant's Exhibit A was admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Team Staffing Solutions assigned as a full-time packaging laborer at Proctor and Gamble from February 25, 2008 to March 10, 2008. On March 7, 2008, the claimant reported for work with a cane and an air cast on his foot due to a fall and injury sustained in December 2007. He was placed on light duty in December but did not follow his restrictions. On March 6, 2008, he provided a doctor's excuse stating he was to be on light duty work until March 7, 2008, and on March 7, 2008, he provided a doctor's excuse stating he should do "seated work only until next visit" and use a cane for ambulation (Claimant's Exhibit A). On March 10, 2008, Proctor and Gamble asked that the claimant be removed from the assignment because it does not accommodate light duty restrictions for non-work-related injuries. The claimant has received a full release and accepted other employment following that assignment and did not seek further assignment with the employer but is not currently working.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. On the other hand 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 to be deemed misconduct within the meaning of the statute.

The employer has the burden of proving disqualifying misconduct. 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 substantial and 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). The claimant was discharged after submitting doctor's notes placing him on light duty for a non-work-related injury. While the employer is not required to accommodate light duty restrictions for non-work-related injuries, the claimant did not commit misconduct by being placed on light-duty work. Therefore, benefits are allowed.

DECISION:

The April 29, 2008, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs