

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERIC A PHILLIPS**

Claimant

**APPEAL NO: 11A-UI-08437-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**L A LEASING INC/SEDONA STAFFING**

Employer

**OC: 03/20/11**

**Claimant: Respondent (1)**

Section 96.5-1-j – Temporary Employment  
871 IAC 24.26(15) – Temporary Employment

**STATEMENT OF THE CASE:**

L A Leasing, Inc. / Sedona Staffing (employer) appealed a representative's June 16, 2011 decision (reference 02) that concluded Eric A. Phillips (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 21, 2011. The claimant participated in the hearing. Chad Baker appeared on the employer's behalf and presented testimony from one other witness, Brenda Lampe. 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:**

Was there a disqualifying separation from employment?

**FINDINGS OF FACT:**

The employer is a temporary staffing agency. The claimant began taking assignments through the employer on December 21, 2009. As of the date of the hearing his final assignment began on January 12, 2011. He worked full time as a packer at the employer's Clinton, Iowa business client through February 16, 2011. The assignment ended that date because the business client deemed the claimant to have quit the assignment by leaving without permission.

The claimant's shift began at 7:00 a.m. and went until 3:30 p.m. On February 16 the claimant reported for work as scheduled, but was experiencing shoulder pain due to a cyst. He spoke to the group leader and indicated he felt he could not continue working due to the pain and needed to leave; she responded that she would find a replacement. The claimant understood he had been given permission to leave, and clocked out and left at 9:29 a.m.

That afternoon the business client's human resources person called the employer and reported that the claimant had punched out and gone home without permission, and that the business client did not want him to return. The employer called and left a message for the claimant indicating that he needed to call the employer before returning to the assignment. The claimant

called back and reported he was going to the doctor the next day. After going to the doctor the claimant recontacted the employer and reported his doctor had him off work through February 20; he was then informed that he could not return to the assignment, and there was no other work currently available for him.

### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. Iowa Code §§ 96.5-1; 96.5-2-a.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The employer asserted that the claimant was not discharged but that he quit the assignment by punching out and going home without permission. The administrative law judge concludes that the employer has failed to satisfy its burden that the claimant voluntarily quit; he reasonably believed he had been given permission by the business client's group leader. Iowa Code § 96.6-2. As the separation was not a voluntary quit, it must be treated as a discharge for purposes of unemployment insurance. 871 IAC 24.26(21).

The issue in this case is then whether the employer discharged the claimant for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason the employer effectively discharged the claimant was his leaving work due to his medical issue. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's June 16, 2011 decision (reference 02) is affirmed. The claimant's separation was not a voluntary quit but was the completion of a temporary assignment. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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