

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTOPHER G ROTH**  
Claimant

**APPEAL NO. 07A-UI-08678-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEAM STAFFING SOLUTIONS INC**  
Employer

**OC: 12/03/06 R: 04**  
**Claimant: Respondent (1)**

Section 96.5-2-a – Discharge  
Section 96.5-3-a – Failure to Accept Suitable Work  
Section 96.4-3 – Able to and Available for Work

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated September 10, 2007, reference 02, that concluded the claimant was available for work and separated due to a short-term layoff. A telephone hearing was held on October 2, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Sarah Fiedler participated in the hearing on behalf of the employer. The parties agreed that the issue of whether the claimant failed to accept an offer of suitable work without good cause could be decided and waived notice of the issue.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

Did the claimant fail to accept an offer of suitable work without good cause?

Was the claimant able to and available for work?

**FINDINGS OF FACT:**

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant's last period of employment was from April 4, 2007, to July 6, 2007. He was assigned to work in the sanitation department at Mt. Pleasant Foods. When the claimant was hired, he signed a statement that he would be considered to have voluntarily quit employment if he did not contact the employer within three working days after the completion of a job assignment and request a new assignment.

On July 6, 2007, the claimant was sent home for fighting at work. The claimant was actually pushed and hit by a coworker without provocation and was not at fault regarding the incident.

The claimant followed the instructions given to him and reported back to Mt. Pleasant Food on July 9, 2007. He was informed that the investigation was not completed and he should contact

the employer on July 11 to find out whether he could go back to work. Mt. Pleasant Foods informed the employer that it wanted the claimant released from the assignment. He reported personally to the employer on July 11, 2007, and was informed that the employer did not know anything about the situation and would call him. A representative contacted the claimant later on July 11 and informed him that he was released from the assignment.

The representative also told the claimant that there was an opening at Home and Hearth Technology. The claimant told the representative he had applied for work there before, he had failed the tests that were required to be hired there, and he was not good at taking tests. The claimant was not informed about the rate of pay or other terms of employment.

The claimant has contacted the employer several times since July 10, 2007, but the employer has not offered the claimant any additional jobs.

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

The first issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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 findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the

proper standard and burden of proof. The employer has not proven the claimant committed misconduct and actually did not discharge him. The claimant was in contact with the employer within three days of the completion of the assignment so he would not be subject to disqualification under Iowa Code section 96.5-1-j.

The next issue in this case is whether the claimant is subject to disqualification for failing to accept an offer of suitable work without good cause.

Iowa Code section 96.5-3-a provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual....

a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

(1) One hundred percent, if the work is offered during the first five weeks of unemployment.

(2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

The unemployment insurance rules provide that the claimant cannot be disqualified from receiving benefits unless a bona fide offer and definite refusal occur. 871 IAC 24.24(1). A bona fide offer would include all the relevant terms of employment including rate of pay and hours, which were not provided in this case.

Finally, the evidence does not establish the claimant is unable to work, unavailable for work, and or has not actively sought work as required by the unemployment insurance law in Iowa Code section 96.4-3.

**DECISION:**

The unemployment insurance decision dated September 10, 2007, reference 02, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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