

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY A BUNSTON

Claimant

APPEAL NO. 11A-UI-02885-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC

Employer

OC: 12/26/10

Claimant: Appellant (2)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's March 4, 2011 determination (reference 03) that disqualified him from receiving benefits and held the employer's account exempt from charge because he had voluntarily quit his employment for reasons that do not qualify him to receive benefits. The claimant participated in the hearing. Ryan Wienberger, a staffing consultant, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant 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 registered to work for the employer on November 8, 2010. When the claimant registered, he received a handbook and information that stated employees were to contact the employer within five days of completing an assignment. Also, the employer required regular contact by people looking for work so the employer knew a person was still able to and available for work.

The employer assigned the claimant to a job on November 29, 2010. This was a temp-to-hire assignment. On December 29, 2010, the client contacted the employer and asked that the claimant be removed from the assignment because his work was not satisfactory. The employer left the claimant a message that same day to let him know he no longer worked at that assignment. The claimant talked to the employer on December 30, 2010 and asked if he could continue working at the assignment if he took a lower wage. This was not an option. While the employer may have had jobs in Rochester, Minnesota (150 miles from the claimant's residence), the employer did not have any work in the claimant's area.

On January 4, the claimant and employer talked and the claimant learned he could pick up his tools that were still at the job. The employer did not have a job to assign to the claimant on

January 4, 2011. The claimant looked for work, but did not keep in contact with the employer for another job assignment.

The claimant established a claim for benefits during the week of December 26, 2010. The employer is not one of his base period employers.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause 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.

When a claimant is terminated, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good-faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant did not complete a job assignment. Instead, the client asked that he be removed for unsatisfactory work performance. On December 30, when the claimant talked to Wienberger, he informed the employer he wanted to continue to work. While the claimant did not say, "Do you any other assignments for me," a reasonable inference was that the claimant wanted to continue working when he asked if he could continue working at the assignment if he accepted a lower wage. Unfortunately, the employer did not have another assignment to offer the claimant at that time. The claimant's December 30, 2010 conversation satisfies Iowa Code § 96.5(1)j. While it is prudent for an unemployed claimant to regularly contact a temporary employment firm in an attempt to obtain employment, Iowa law does not require a claimant to do this.

The evidence establishes the claimant did not quit his employment and he sought another job or continued employment when he talked to the employer on December 30, 2010. The claimant was released from a job assignment because a client was not satisfied with his work performance. The claimant did not commit work-connected misconduct. Therefore, as of December 26, 2010, the claimant is qualified to receive benefits.

Since the employer is not one of the claimant's base period employers, the employer's account will not be charged during the claimant's current benefit year.

DECISION:

The representative's March 4, 2011 determination (reference 03) is reversed. The claimant did not voluntarily quit his employment. Instead, he became unemployed because a client was not satisfied with his work performance. The claimant did not commit work-connected misconduct. As of December 26, 2010, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw