

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT SPEIGHTS
Claimant

APPEAL NO: 09A-UI-18877-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 11-08-09
Claimant: Appellant (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 11, 2009, reference 02, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on January 28, 2010. The claimant participated in the hearing. Colleen McGuinty, UI Administrator, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant voluntarily left his employment with good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired by Sedona Staffing September 5, 2008. His last assignment was at Embarco North America as a full-time general laborer working first shift and earning \$8.00 per hour. He accepted the position June 22, 2009, and was scheduled to go through the first day "check" June 23, 2009. He did not call or show up June 23, 2009, so the employer called him and he stated he did not have steel toed boots but would be getting some and would be in. He did not call back or show up so the employer called him again after the client notified it he was not there and the claimant eventually showed up for work and worked six and one-half hours. He was ill June 24, 2009, and said he was going to see his doctor but did not provide a doctor's note. He called the evening of June 24, 2009, and left a message stating he would not be in Friday, June 25, 2009, but did not tell the employer he would be absent due to illness. The client chose to give him another chance but he failed to call or show up for work Monday, June 26, 2009, and the client informed the employer it did not want the claimant back. The claimant testified he went in June 26, 2009, and was told the client already had a replacement worker for him but the employer testified it did not supply the client with another employee until June 29, 2009. The claimant has maintained contact with the employer notifying it he was available since the end of that assignment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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 claimant accepted the assignment June 22, 2009, but did not show up for his first day June 23, 2009, until after the employer called him twice. He was absent due to illness June 24 and June 25, 2009, but was a no-call/no-show Friday, June 26, 2009, after the client elected to give him a second chance. The employer chose to end his employment Monday, June 29, 2009, because it felt he was unreliable and the administrative law judge concurs. The claimant's conduct demonstrated a willful disregard of the standards of behavior the employer has the right to expect of employees and shows an intentional and substantial disregard of the employer's interests and the employee's duties and obligations to the employer. The employer has met its burden of proving disqualifying job misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The December 11, 2009, reference 02, decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has

worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css