

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NICHOLAS M MONTELONGO**  
Claimant

**APPEAL NO. 11A-UI-13559-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DES STAFFING SERVICES INC**  
Employer

**OC: 05/15/11**  
**Claimant: Appellant (5)**

Section 96.5( 1) – Quit  
Section 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

The claimant, Nicholas Montelongo, filed an appeal from a decision dated October 11, 2011, reference 05. The decision disqualified him from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on November 8, 2011. The claimant participated on his own behalf. The employer, DES Staffing, participated by Human Resources Coordinator Stacey Navarro and Operations Manager Shane Sorenson.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits or quit work with good cause attributable to the employer.

**FINDINGS OF FACT:**

Nicholas Montelongo was employed by DES Staffing from June 11, 2007 until October 7, 2011, as general labor for client companies. He had been talked to by Operations Manager Shane Sorenson in early September 2011 because of an altercation he had with another worker at Allstate Industries. He had also been told he had been “ill advised” when he walked away from another job in June 2011 because he did not like the rate of pay and that he believed the client company was not going to hire him permanently.

His last assignment began on September 29, 2011, at Gypsum Supply. The owner of the company, Jody, called Mr. Sorenson on October 7, 2011, to say Mr. Montelongo had walked off the job. The claimant maintained he had been told to leave by the supervisor, Jess, who told him if he was not going to do the job he should leave. Jody reported the claimant had been told to slow down because he was presenting a safety hazard and that he left because he felt the supervisor was harassing him.

Mr. Montelongo contacted DES Staffing on Monday, October 10, 2011, and was informed the agency would not give him any more assignments due to the recent problems with his other assignments.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The claimant did walk off the assignment but did not voluntarily quit DES Staffing. He anticipated he would be given more assignments when he called in on the following Monday.

Iowa Code § 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 was discharged for inappropriate conduct on his last three assignments. Mr. Montelongo maintains he never got any verbal warnings or counselings from Mr. Sorenson. The administrative law judge does not find it at all credible that an employer would not counsel an employee for getting into an altercation with other workers while assigned to a client company. It is also not credible he had not been counseled about abandoning a lucrative job assignment because he thought he should be paid more money than he had agreed to accept.

Mr. Montelongo was discharged for abandoning a second job simply because he did not agree with the supervisor who was advising him about maintaining a safe work environment. This is a

violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

**DECISION:**

The representative's decision of October 11, 2011, reference 05, is modified without effect. Nicholas Montelongo did not quit but was discharged for misconduct. He is disqualified and benefits are withheld until he has earned ten times his weekly benefit amount in insured work, provided he is otherwise eligible.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs