

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD R GIBSON JR
Claimant

APPEAL NO. 08A-UI-01287-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEDONA STAFFING
Employer

**OC: 02/04/07 R: 04
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Donald R. Gibson, Jr. (claimant) appealed a representative's February 5, 2008 decision (reference 07) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Sedona Staffing (employer) would not be charged because he had been discharged for disqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 20, 2008. The claimant participated in the hearing. Colleen McGuinty and Dawn Fulton appeared on the employer's behalf. 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:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant registered to work for the employer, a temporary staffing agency, in June 1990. Most recently, the employer assigned the claimant to a job that started October 29, 2007. The claimant did not complete this job assignment.

The last day the claimant worked at the assignment was January 2, 2008. On January 3, the claimant notified the client he was unable to work. The claimant did not call or report to work on January 4. The client contacted the employer on Monday, January 7, to ask if the claimant planned to report to work that day since he had not called or reported to work on January 4. The employer then contacted the claimant and learned he was going to submit an injury report that he asserted happened on December 26.

After the claimant submitted the first report of injury on January 7, the employer told him he needed to be checked by a doctor at Medical Associates Clinic. The exam was needed to find out if the claimant had any work restrictions. Also, after an injury occurs, the employer requires employees to submit to a drug test. The claimant went to the Medical Associates Clinic but was only there about ten minutes and then left. The claimant asserted he left because he had a panic attack.

When the employer learned the claimant had left the clinic without being seen by a doctor, Fulton called the claimant and talked to the claimant. She told him the employer required him to be seen by

a doctor at Medical Associates Clinic that day. Fulton also explained that his job was in jeopardy if he did not go back to the clinic to be checked by the employer's doctor and submit to a drug test. The claimant indicated he would go back to the clinic. The claimant, however, did not go back to the claimant that day. The employer left messages for the claimant on January 8, but the claimant did not have any further conversation with the employer. The claimant wanted to see his personal physician. The claimant did not see any doctor about his December 26 injury until late January 2008.

As a result of the claimant's failure to follow the employer's directions - to have a doctor treat him at Medical Associates Clinic and submit to a drug test on January 7, the employer discharged the claimant.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. For unemployment insurance purposes, 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's failure to have the employer's doctor examine him on January 7 and to submit to a drug test amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. The claimant committed work-connected misconduct. As of January 13, 2008, the claimant is not qualified to receive unemployment insurance benefits.

DECISION:

The representative's February 5, 2008 decision (reference 07) is affirmed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of January 13, 2008. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw