

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

KENNETH A NICHOLS  
610 E END AVE  
EVANSDALE IA 50707

LABOR READY MIDWEST INC  
c/o PAYROLL TAX DEPT  
PO BOX 2910  
TACOMA WA 98401 2910

LABOR READY MIDWEST INC  
c/o RICK BARTELETT  
1818 WILLISTON AVE  
WATERLOO IA 50702

LABOR READY MIDWEST  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166 0283

Section 96.7-2-a – Employer Liability

STATEMENT OF THE CASE:

Labor Ready Midwest, Inc. (employer) appealed a representative's April 6, 2005 decision (reference 02) that concluded Kenneth A. Nichols (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 11, 2005. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Rick Bartellett, the branch manager, 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.

Appeal Number: 05A-UI-04183-DWT  
OC: 02/27/05 R: 04  
Claimant: Respondent (4)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the *Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.*

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

ISSUE:

Is the employer's account subject to charge?

FINDINGS OF FACT:

The claimant initially registered to work for the employer's business clients on August 27, 2001. Most recently, the employer again assigned the claimant to a job that started on May 10, 2004. The claimant worked this job until August 27. The business client did not want the claimant to return to work after August 27 because the claimant left work early too many times. On August 28, the claimant declined a day of work because he was not available to work all day. The employer then told the claimant that if he again left a work assignment early, the employer would suspend him from any work assignment for 30 days. The claimant then worked as scheduled from September 2 through 14.

The claimant accepted a job on September 27. The claimant was scheduled to work eight hours on September 27. The claimant left work after working only four hours. When the claimant picked up his wages for four hours of work, the employer told him he was suspended for 30 days. The claimant gave no explanation as to why he only worked four hours instead of the eight the employer assigned him to work.

After the claimant worked for the employer, but before he filed his claim for unemployment insurance benefits, the claimant worked for another employer and earned more than ten times his weekly benefit amount of \$118.00. The claimant established a claim for unemployment insurance benefits during the week of February 27, 2005.

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 or suspends him for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. The facts do not establish that the claimant voluntarily quit working for the employer. Instead, the employer suspended the claimant on September 27 for leaving a job assignment four hours early.

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 facts indicate the claimant knew or should have known as of August 28 that if he continued to leave work assignments early, the employer would suspend him from any work assignments for 30 days. On September 27, the claimant left a work assignment early. It is not known why the claimant left work early. Therefore, the facts indicate the claimant intentionally and substantially disregarded the employer's interests by leaving a job assignment four hours early. The claimant committed work-connected misconduct. When a claimant is disqualified from receiving unemployment insurance benefits for committing work-connected misconduct, his

disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. Since the claimant earned more than \$1,118.00 in wages before he established his unemployment insurance claim, he is qualified to receive unemployment insurance benefits as of February 27, 2005. The employer's account will not be charged. Iowa Code § 96.7-2-a.

DECISION:

The representative's April 6, 2005 decision (reference 02) is modified in the employer's favor. The employer suspended the claimant from employment on September 27, 2004, for reasons constituting work-connected misconduct. Since the claimant requalified or earned more than \$1,118.00 in wages before he established his unemployment insurance claim, he is qualified to receive unemployment insurance benefits as of February 27, 2005. The employer's account will not be charged.

dlw/sc