

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT FELDMANN**  
Claimant

**APPEAL NO: 10A-UI-12945-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEAM STAFFING SOLUTIONS INC**  
Employer

**OC: 04/11/10**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)(a) - Discharge for Misconduct  
Iowa Code § 96.5-1-j - Voluntary Quit of Temporary Employment

**STATEMENT OF THE CASE:**

Robert Feldmann (claimant) appealed an unemployment insurance decision dated August 18, 2010, reference 03, which held that he was not eligible for unemployment insurance benefits because he voluntarily quit his employment with Team Staffing Solutions, Inc. (employer) with. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 9, 2010. The claimant participated in the hearing with Attorney Robert De Kock. The employer participated through Sara Fiedler, Claims Administrator. 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:**

The issue is whether the employer discharged the claimant for work-related misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a temporary employee from May 25, 2010 through July 26, 2010. He was assigned as a full-time employee at the Grain Processing Corporation, which is one of the employer's clients. The claimant walked off that assignment at 4:00 a.m. on July 26, 2010 because it was too physically demanding. He had been shoveling wet grain for hours and had numerous burns, aches and pains from the work. The employer's client subsequently sent the employer an email stating the claimant walked off the job. The employer contacted the claimant to ask him about it and he said he wanted to talk about it in person.

The claimant went to the employer's facility on July 26, 2010 and explained why he quit the assignment. The claimant requested additional work at that time and again one week later. However, the employer considered that the claimant quit his employment with Team Staffing and did not provide the claimant with additional work.

The employer witness that testified in the hearing did not have any contact with the claimant. The employer witness reported that its staff member wrote the claimant's name down on the work sheet but the witness had no knowledge as to whether or not the claimant requested additional work on July 26, 2010. The staff member who spoke with the claimant on July 26, 2010 was not available to testify.

### **REASONING AND CONCLUSIONS OF LAW:**

The issue is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. The claimant is not qualified to receive unemployment insurance benefits if he voluntarily quit without good cause attributable to the employer or if the employer discharged him for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The claimant was consistent in expressing his wish to return to work with the employer. In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 608, 612 (Iowa 1980) and Peck v. Employment Appeal Bd., 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant did not exhibit the intent to quit and did not act to carry it out. He quit his assignment but not the employment itself. Since the claimant did not have the requisite intent necessary to sever the employment relationship so as to treat the separation as a "voluntary quit" for unemployment insurance purposes, it must be treated as a discharge.

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 employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. Miller v. Employment Appeal Board, 423 N.W.2d 211 (Iowa App. 1988).

The employer discharged the claimant because he quit an assignment. Typically if a claimant walks off the job, he would be disqualified for a voluntary separation without good cause attributable to the employer. However, the claimant did not quit his employment with Team Staffing, he stopped working an assignment with the Grain Processing Corporation, who was not his employer. The administrative law judge understands the employer's frustration in this case but the law must be followed. The claimant quit his assignment due to physical pain but there was no wrongful intent on his part. Consequently, the employer did not meet its burden. Work-connected misconduct as defined by the unemployment insurance law has not been established in this case and benefits are allowed.

**DECISION:**

The unemployment insurance decision dated August 18, 2010, reference 03, is reversed. The claimant was discharged. Misconduct has not been established. Benefits are allowed, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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