

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COREY C WILSON
Claimant

APPEAL NO. 08A-UI-08540-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

USA STAFFING INC
Employer

OC: 08/10/08 R: 02
Claimant: Respondent (2/R)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

USA Staffing, Inc. (employer) appealed a representative's September 15, 2008 decision (reference 03) that concluded Corey C. Wilson (claimant) was qualified to receive 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 October 9, 2008. The claimant responded to the hearing notice, but was not available for the hearing. Although a message was left for the claimant to contact the Appeals Section immediately, the claimant did not contact the Appeals Section again. Jeff Oswald, a representative with Unemployment Services, appeared on the employer's behalf. Mitch Seitz testified on the employer's behalf. Doug Mienders was also present to testify, but did not. Based on the evidence, the arguments of the employer, 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 employer is staffing firm. The claimant applied to work on behalf of the employer's clients. He had been working since 2006. On July 17, 2007, the claimant came to the employer's office to pick up his paycheck. The claimant was upset when he noticed the employer deducted \$60.00 from his paycheck. The employer deducted the money because the claimant owed the employer money. The claimant became very irate, used profanity, and threatened to physically harm employees. The claimant's outburst was heard by other families and children at the employer's office. When Seitz asked the claimant to calm down so people in the office would not be upset, the claimant did not listen. He continued to yell and threaten employees. When the claimant did not calm down or leave, the employer discharged him. The claimant created such a disturbance that the employer finally called the police. The claimant left only after the police came.

The claimant received a verbal warning on March 31 2006, for his aggressive behavior toward other workers. The employer told the claimant it was not his position to tell co-workers what to do or how to do their work.

The claimant established a claim for benefits during the week of August 10, 2008. The benefits the Department considered the claimant eligible to receive were used to offset a previously established overpayment.

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 conduct on July 17, 2007, amounts to an intentional and substantial disregard of the standard of behavior the employer has a right to expect from an employee. Even though the claimant was upset because the employer deducted money he owed the employer, his threats of physical violence and swearing in front of the public constitutes work-connected misconduct. As of August 10, 2008, the claimant is not qualified to receive benefits.

The issues of overpayment and/or waiver of overpayment are remanded to the Claims Section to determine.

DECISION:

The representative's September 15, 2008 decision (reference 03) is reversed. The employer discharged the claimant for reasons that constitute work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of August 10, 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. The issues of overpayment and/or waiver of overpayment are remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw