

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN A KINNETZ
Claimant

APPEAL NO. 09A-UI-00924-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

**OC: 11/09/08 R: 01
Claimant: Appellant (2)**

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

John A. Kinnetz filed a timely appeal from an unemployment insurance decision dated January 16, 2009, reference 03, that disqualified him for benefits following his separation from employment with Advance Services, Inc. After due notice was issued, a telephone hearing was held February 3, 2009 with Mr. Kinnetz participating. Retention Coordinator Jacque Finkral participated for the employer.

ISSUE:

Was the claimant's separation from employment a disqualifying event?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: John A. Kinnetz was employed by Advance Services from May 30, 2008 until November 7, 2008. He worked on a temp-to-hire basis at the employer's client, Cycle Country. On or about November 7, 2008 Cycle Country notified Advance Services that Mr. Kinnetz's services were no longer needed. Mr. Kinnetz had been about to start employment with Advance Services but was dissatisfied with the salary offer he received.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the claimant's separation from employment was a disqualifying event. For the reasons which follow, the administrative law judge concludes that it was not.

Mr. Kinnetz did not resign from employment with Advance Services, Inc. Cycle Country told the employer that Mr. Kinnetz's services were no longer needed. This caused Advance Services to end Mr. Kinnetz's employment. A separation under such circumstances is better characterized as a discharge.

Iowa Code section 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 question is whether the employment ended because of misconduct on the part of Mr. Kinnetz. From the evidence in the record the administrative law judge concludes that the separation occurred because Mr. Kinnetz objected to the rate of pay offered by Cycle Country. Whether or not it was wise to quibble over a few cents per hour is not the issue. The question is whether it was a deliberate act contrary to the employer's interest for Mr. Kinnetz to do so. The administrative law judge concludes that it was not. Bargaining over salaries is an accepted activity in the workplace. No disqualification may be imposed.

DECISION:

The unemployment insurance decision dated January 16, 2009, reference 03, is reversed. The claimant was discharged from employment under circumstances not constituting job-related

misconduct. He is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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