

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL J FRUEH**  
Claimant

**APPEAL NO. 10A-UI-07436-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WORKSOURCE INC  
WORKSOURCE STAFFING**  
Employer

**Original Claim: 03/28/10  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Michael J. Frueh (claimant) appealed a representative's May 12, 2010 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits after a separation from employment from Worksource, Inc. / Worksource Staffing (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 12, 2010. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

**FINDINGS OF FACT:**

The employer is a temporary employment firm. The claimant's one and only assignment with the employer began on January 11, 2010. He worked full-time as a mold preparation worker in a temp-to-hire position on the second shift at the employer's Fort Madison, Iowa, fiberglass injection molding business client. His last day on the assignment was March 26, 2010. The assignment ended because the employer's business client determined it would not employ the claimant on a permanent basis. The claimant communicated this information to the employer and sought to find out what the reason had been. The employer informed him that the business client determined that the claimant had failed to pass a background check and may have falsified information on an employment application.

The claimant had been charged with misdemeanor domestic assault in 1995; the charges were resolved with a guilty plea and no sanctions in 2001. There was no evidence provided that on either the application for employment with the employer or on his application for employment with the business client the application had requested information regarding this type of

misdemeanor charge; he did not intentionally leave that information off any application. The employer had advised the claimant in January 2010 that he had passed the background check run on him by the employer. There was no evidence provided that the employer would not have placed the claimant in the assignment had he affirmatively ensured the employer was aware of the 2001 misdemeanor plea.

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

The essential question in this case is whether there was a disqualifying separation from employment when the business client ended the claimant's assignment and effectively caused the employer to discharge him; he would be disqualified if it was for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer or client was right or even had any other choice but to terminate the claimant's employment, 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 is misconduct that warrants denial of unemployment insurance benefits are two separate questions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits, an employer must establish the employee was responsible for a deliberate act or omission that was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior that 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer or its business client for ending the claimant's assignment is the failure to pass the business client's background check for a permanent hire, and an alleged falsification of a job application. First, the employer has not established that the claimant falsified any application by providing a clearly false answer. Further, even if there was a properly phrased question to which he should have reported the 2001 misdemeanor plea, in order to be misconduct the false statement must endanger the health, safety, or morals of the applicant or others or result in exposing the employer to legal liabilities or penalties or result in placing the employer in jeopardy. The Iowa court has ruled that a misrepresentation on a job application must be materially related to job performance to disqualify a claimant from receiving unemployment insurance benefits. Larson v. Employment Appeal Board, 474 N.W.2d 570 (Iowa 1991). Although the court did not define materiality, it cited Independent School District v. Hanson, 412 N.W.2d 320 (Minn. App. 1987), which stated that a misrepresentation is not

material if a truthful answer would not have prevented the person from being hired. The employer apparently did run a background check on the claimant, which presumably included verification of the information needed by the employer, even including prior pleas, and he was in fact hired. The fact that the business client may have imposed a more stringent requirement than the employer had anticipated is not a fault on the part of the claimant. Therefore, the administrative law judge concludes that the claimant's failure to pass the business client's background check was not misconduct and, as a consequence, he is not disqualified for unemployment insurance benefits. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

**DECISION:**

The representative's May 12, 2010 decision (reference 02) is reversed. The claimant did not voluntarily quit; and the employer did discharge the claimant, but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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