

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL D COOK
Claimant

APPEAL NO: 09A-UI-06551-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANPOWER TEMPORARY SERVICES
Employer

OC: 03/08/09
Claimant: Respondent (5)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Manpower Temporary Services (employer) appealed a representative's April 15, 2009 decision (reference 02) that concluded Michael D. Cook (claimant) was qualified to receive benefits because he completed a job assignment and properly notified the employer he had completed the assignment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 26, 2009. The claimant participated in the hearing. Kerry Hale, the employer's on-site 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.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The employer is a staffing firm. The claimant registered to work for the employer on November 26, 2008. On January 16, 2009, the employer assigned the claimant to a temp-to-hire job.

Prior to March 1, the claimant missed some work. Most of these absences were health-related absences. Although the employer asserted the claimant received a warning on February 25 for attendance issues, the claimant denied receiving any warnings for his attendance and had no idea his job was in jeopardy.

On March 1, the claimant had a relative contact the employer because he had to rush his brother to the hospital. On March 2, the claimant notified the employer he was unable to work because he was with his brother. The claimant and his father are the only relatives in the vicinity and the claimant's father is ill.

On March 3, the employer contacted the claimant and told him his assignment had been ended for attendance issues. The client asked the employer to remove the claimant from the assignment.

On March 4, the claimant talked to Laurie, an employee who answers the phone in the Burlington office. The claimant asked why he had been let go with no warnings and if the employer had another job to assign to him. Laurie did not document that the claimant called on March 4. Laurie told the claimant that the employer did not have another job to assign to him. The first time the employer documented the claimant contacted the employer about another job was March 10. The employer again did not have a job to assign to him.

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.

An individual who is a temporary employee of a temporary employment firm may be disqualified from receiving unemployment insurance benefits if the individual does not notify the temporary employment firm within three working days after completing the job assignment in an attempt to obtain another job assignment. To be disqualified from receiving benefits, at the time of hire the employer must advise the individual in writing of the three-day notification rule and that the individual may be disqualified from receiving unemployment insurance benefits if he fails to notify the employer. Iowa Code § 96.5-1-j. Based on the facts in this case, this law section does not apply because the claimant did not complete a job assignment. Instead, the employer discharged the claimant on March 4 for attendance issues.

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

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 evidence indicated the claimant notified the employer and or client when he was unable to work. The claimant was most recently absent because he had to rush his brother to the hospital and make sure he was properly treated. Even if the employer talked to the claimant about his attendance on February 25, the claimant did not recall such a conversation. (This is the reason for written warnings that employees sign.) As of March 1, the claimant had no understanding his job was in jeopardy for attendance issues. On March 1 and 2, the claimant did not intentionally fail to work as scheduled. Instead, he did not report to work because of a family medical emergency. Based on the facts in this case, the claimant did not commit

work-connected misconduct. Therefore, as of March 8, 2009, the claimant is qualified to receive benefits.

The employer is not one of the claimant's base period employers. During the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's April 15, 2009 decision (reference 02) is modified, but the modification has no legal consequence. The claimant did not complete a job assignment. Instead, the employer discharged him for business reasons that do not constitute work-connected misconduct. As of March 8, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirement. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css