

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALEXEI YAKOBSON

Claimant

APPEAL NO. 09A-UI-15225-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES STAFFING SERVICES INC

Employer

OC: 08/09/09

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 28, 2009, reference 01, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on November 10, 2009. The parties were properly notified about the hearing. The claimant participated in the hearing. Amy Poratz participated in the hearing on behalf of the employer with a witness, John Dunkin.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked on an assignment as a laborer at Becker Underwood from March 26, 2009, to August 25, 2009. The claimant was informed and understood that under the employer's work rules, employees were required to notify DES Staffing if they were not able to work as scheduled.

The claimant was sick and unable to work on August 26 and 27. Despite the work rule, the claimant believed he was supposed to notify Becker Underwood about his absences. He called each day and left a message for his supervisor at Becker Underwood and then followed up to make sure she got his message.

The next day the claimant was scheduled to work was on August 31, 2009. He reported to Becker Underwood as scheduled that day, but was sent home. He reported to DES Staffing after he was sent home and spoke to the division manager, John Dunkin, who told him that there was no work available at Becker Underwood. He was discharged for his two absences the previous week. The claimant had not had any previous attendance problems.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. To voluntarily quit means a claimant exercises a voluntary choice between remaining employed or discontinuing the employment relationship and chooses to leave employment. To establish a voluntary quit requires that a claimant must intend to terminate employment. Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989); Peck v. Employment Appeal Board, 492 N.W.2d 438, 440 (Iowa App. 1992). The evidence is clear that the claimant did not intend to quit and the separation was a discharge.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

No willful and substantial misconduct has been proven in this case. Even if the claimant was supposed to call DES Staffing, the employer has failed to show any willful misconduct when he communicated his absences to his supervisor at Becker Underwood. His absences were due to illness. Finally, he had not had any prior attendance problems.

DECISION:

The unemployment insurance decision dated September 28, 2009, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css