

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN E DAYBOLL**  
Claimant

**APPEAL NO. 10A-UI-15165-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CLINTON STAFFING COMPANY**  
Employer

**OC: 08/15/10**  
**Claimant: Appellant (5)**

Section 96.5-2-A – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated November 1, 2010, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on December 17, 2010. Claimant participated. Employer participated by Jane, Brown, Human Resources Manager. The record consists of the testimony of John Dayboll; the testimony of Jane Brown; and Employer's Exhibits 1-6.

**ISSUE:**

Whether the claimant was discharged for misconduct.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a temporary staffing agency. The claimant began accepting temporary work assignments on July 29, 2009. His last assignment was at Skyline Center. He worked full time as a laborer. His last day of work was August 4, 2010.

The claimant had attendance problems at the Skyline assignment that dated back to at least April 5, 2010. On April 5, 2010, the claimant called in due to a headache and he was given a verbal warning on that date. (Exhibit 1) The verbal warning was given because there had been previous attendance problems and his attendance was being monitored by Skyline. He was absent for a funeral on May 5, 2010. He left early for a job interview on May 20, 2010. He was absent due to court on May 27, 2010. He was absent due to illness on June 15, 2010 but he did not follow the employer's notification procedure. He was given a written warning for failing to follow the notification procedure. (Exhibit 5) He was tardy on June 30, 2010. He was absent on August 5, 2010, because he was up all night with his son. On August 6, 2010, he said that he was going to be home with his son. Both he and his wife stayed home with him. (Exhibit 1) He did not report this absence until after his shift had started.

The claimant was informed on August 6, 2010, that if he missed any more time he would have to be ended. The claimant informed the employer that he would have to miss August 13, 2010,

because his son had an appointment in Chicago. The claimant then agreed that his assignment would end at Skyline. He was not offered further assignments with the employer due to his poor attendance.

The employer had a written policy, of which the claimant was aware, that any absences were to be reported one hour prior to the start of the shift.

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

REF 1

A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

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.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duty to the employer. Excessive unexcused absenteeism is one form of misconduct. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) The concept includes leaving early and tardiness. Absence due to matters of personal responsibility is considered unexcused. See Harlan v. IDJS, 350 N.W.2d 192 (Iowa 1984) Absence due to

illness and other excusable reasons is deemed excused if the employee properly notifies the employer. See Higgins, supra, and 871 IAC 24.32(7) The employer has the burden of proof to show misconduct.

Two different separations occurred in this case. The first separation occurred when the claimant's assignment ended at Skyline. The claimant's attendance was poor and Skyline, the place where the claimant had been placed, was monitoring closely the claimant's attendance. The claimant missed August 5, 2010, and August 6, 2010. The claimant missed August 5, 2010, because he had been up all night with his son. He did follow the notification procedures for that absence. However, he did not properly notify the employer about his absence on August 6, 2010. His testimony was that he had actually come to work but then found out his wife had not made an appointment for his son to see a doctor. The claimant felt he needed to do that. Why he did not call his employer until later was never adequately explained by the claimant.

The claimant was told on August 6, 2010, that he could not miss any more work if he wanted to keep his job at Skyline. The claimant then said he had an appointment for his son on August 13, 2010, in Chicago. The claimant did not want his wife to drive to Chicago. The claimant then agreed that his assignment at Skyline could end. He testified that he had been trying to get out Skyline for some time because he believed his wife was having an affair with a supervisor at Skyline.

The next separation concerns the claimant's employment status with the employer, i.e., Clinton Staffing Company. The claimant was told that he was not eligible for other assignments due to poor attendance. The record in this case shows excessive unexcused absenteeism. The claimant had received two warnings about his attendance. Not only was he absent, he failed to follow the employer's policy on reporting absences. He attributes his final absence to needing to take his son to a doctor. Even if that absence is considered excused, the claimant did not follow the employer's attendance policy. Other absences were due to matters of personal responsibility such as court dates, funerals, and a job interview. He did call in due to food poisoning, but again he failed to follow the employer's notification policy. He received a written warning on June 16, 2010. The claimant was clearly aware that his attendance was putting his job in jeopardy.

The administrative law judge concludes that the claimant's separation of employment from the employer was due to misconduct on his part. The evidence established excessive unexcused absenteeism. The claimant agreed voluntarily to end his assignment at Skyline. However, his separation of employment from this employer was not voluntary as he apparently wanted additional assignments at some place other than Skyline. The employer ended the employment relationship due to excessive absenteeism. Since the evidence shows excessive unexcused absenteeism, the claimant was discharged for disqualifying misconduct. Benefits are denied.

**DECISION:**

The decision of the representative dated November 1, 2010, reference 01, is modified without effect. Unemployment insurance benefits shall be withheld until claimant has worked in and

been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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