

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SALVATORE P MIDDONO, JR**  
Claimant

**APPEAL NO. 09A-UI-18759-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**  
Employer

**OC: 10/18/09**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated December 8, 2009, reference 02, which denied unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 26, 2010. The claimant participated personally. The employer participated by Ms. Jaque Finkral, Retention Coordinator. Employer's Exhibits One through Five and Claimant's Exhibit A were received into evidence.

**ISSUE:**

The issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Claimant was employed by Advance Services, Inc. from September 14, 2009 assigned to work at the Sygenta facility as a full-time temporary agricultural worker. Claimant's last day of work was September 27, 2009. Mr. Middono injured his back in a non-work-related injury. Claimant provided medical documentation that he was unable to work. Mr. Middono was subsequently informed that he was discharged from employment as he could not provide a full medical release. The employer believed that he had failed to report without notification for three or more consecutive work days. Mr. Middono had supplied the medical documentation to his employer verifying that he was unable to work due to a medical condition at the time that he was discharged from employment.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was discharged for no disqualifying reason.

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 evidence in the record establishes that Mr. Middono supplied medical documentation verifying that he was unable to report for scheduled work. The employer made a management decision to discharge Mr. Middono. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, intentional disqualifying misconduct on the part of the claimant at the time of separation has not been shown. Benefits are allowed, providing the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated December 8, 2009, reference 02, is reversed. The claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

pjs/pjs