

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDON K DAVIS
Claimant

APPEAL NO. 07A-UI-04806-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

USA STAFFING INC
Employer

OC: 04/01/07 R: 02
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
Section 96.5-3-a – Failure to Accept Suitable Work
Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 7, 2007, reference 02, that concluded the claimant had separated from temporary employment and was not disqualified from receiving benefits. A telephone hearing was held on May 29, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Doug Conrad participated in the hearing on behalf of the employer.

ISSUES:

Was the claimant discharged for work-connected misconduct?

Did the claimant voluntarily quit temporary employment?

Did the claimant fail to accept an offer of suitable work without good cause?

Was the claimant able to and available for work?

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. When the claimant was hired, he signed a statement that he would contact the employer weekly after completing a work assignment.

The claimant worked for the employer on a job assignment at Bearing Distributing from November 7, 2006, to February 9, 2007. He was removed from that job assignment due to a conflict that he had with a long-term employee there. The claimant did nothing to cause a conflict. Even before he was removed from the assignment, he had complained about the employee's mistreatment of him. He had participated in an interview for another job through the employer but had decided to stick it out with Bearing Distributing. On February 9, 2007, after being informed that he was being removed from the job at Bearing Distributing, the claimant

went into the employer's office to pick up his check. He spoke to the branch manager about future assignments, but the employer did not have anything available at that time.

The claimant had informed the employer that if the employer did not have worked for him, he was going to go to Des Moines and try to find employment. The claimant did go to Des Moines to find other work. He did not contact the employer in Fort Dodge after that. He did check with a branch office in Des Moines, but they did not have any immediate work available. The claimant has made an active search for work and has been available for suitable work.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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 fails to establish that the claimant was removed from the assignment for any work-connected misconduct. Additionally, the employer did not treat the claimant's removal from the assignment as a separation from employment.

Iowa Code section 96.5-1-j provides that individuals employed by a temporary agency must contact their employer within three working days after the completion of a work assignment and seek a new assignment or they will be considered to have voluntarily quit employment without

good cause attributable to the employer, provided that the employer has given them a statement to read and sign that advises them of these requirements. The claimant is not subject to disqualification under this section since the employer does not have a policy complying with the law, and the claimant in fact contacted the employer on the day he was removed from the assignment. There is no disqualification provided for under the law for not contacting an employer weekly.

There's no evidence that the claimant refused any offers of work after applying for unemployment insurance benefits. Therefore, he is not subject to disqualification under Iowa Code section 96.5-3-a for failing to accept suitable work in Iowa Code section 96.4-3. The evidence establishes that the claimant was able to work, available for work, and was actively seeking work in compliance with Iowa Code section 96.4-3. There is no requirement under the law for the claimant to maintain contact with a former employer.

DECISION:

The unemployment insurance decision dated May 7, 2007, reference 02, is affirmed. 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