

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL E SCOTT
Claimant

APPEAL NO. 11A-UI-08712-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 06/05/11
Claimant: Respondent (1)

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's June 24, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for non-disqualifying reasons. The claimant participated in the hearing. Holly Carter, the employer's unemployment insurance specialist, appeared on the employer's behalf. During the hearing, Employer Exhibits One and Two and Claimant Exhibits A and B were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant is qualified to receive benefits.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant registered to work for the employer in July 2010. He received a copy of the employer's assignment policy. (Employer Exhibit One.). This policy informed him that it was his responsibility to contact the employer within three working days after an assignment ends or he could be considered to have voluntarily quit his employment.

The employer assigned the claimant to a job on September 27, 2010. The last day the claimant worked at the assignment was October 25. On October 26, the claimant notified the employer that he was ill and unable work. The claimant went to his doctor and was unexpectedly admitted to the hospital. The claimant was hospitalized for five days. When the claimant had not been released to work on November 1, the client asked the employer to end the claimant's assignment for attendance issues. The employer informed the claimant on November 1 that this assignment was over. When the claimant went to the employer's office to pick up his final paycheck, he could not have his check until he signed a form indicating he had been discharged for absenteeism. (Claimant Exhibit B.)

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. 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).

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 after completing an assignment. Iowa Code § 96.5(1)j. Although the employer asserted this statute applies in this case, it does not. The claimant did not complete the assignment. He was let go or discharged for attendance reasons.

Even though the employer may have assigned the claimant to another job because his absences had been verified by a doctor, the employer did not convey this to the claimant. Instead, the employer made the claimant sign a form indicating he had been discharged for attendance issues. The employer could have made a comment on the form that the claimant was eligible for other assignments if he kept in contact with the employer, but the employer did not do this.

Even though the employer had no choice but to end the claimant's assignment at the client's request, the claimant did not commit work-connected misconduct. The claimant was ill and unable to work. As of June 5, 2011, the claimant is qualified to receive benefits.

DECISION:

The representative's June 24, 2011 determination (reference 01) is affirmed. The employer discharged the claimant for justifiable business reasons, but the claimant did not commit work-connected misconduct. As of June 5, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw