

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RAYMOND B BIRDEN**  
Claimant

**APPEAL NO. 08A-UI-04677-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**USA STAFFING INC**  
Employer

**OC: 04/06/08 R: 03**  
**Claimant: Respondent (4)**

Section 96.5-1-d – Temporary Employment Separation for Medical Reasons

**STATEMENT OF THE CASE:**

USA Staffing, Inc. (employer) appealed a representative's May 12, 2008 decision (reference 04) that concluded Raymond B. Birden (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the claimant's separation from employment was for nondisqualifying reasons. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 2, 2008. The claimant participated in the hearing. Jeff Oswald, a representative with Unemployment Services, appeared on the employer's behalf. Doug Mienders testified for the employer. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the claimant voluntarily quit his employment for reasons that qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant registered to work for the employer in June 2006. The employer understood the claimant had full-time or regular employment with a construction employer and would contact the employer when he was available to work or laid off from his full-time job.

After the claimant injured his shoulder while working for his full time or regular employer, he had some medical restrictions. The claimant's injury was covered under his full time employer's worker's compensation insurance. The claimant needed surgery on his shoulder. The employer knew about the needed surgery. The claimant had been working for the employer at a job assignment as a forklift operator in September 2007. After the claimant completed this assignment on September 28, 2007, he had his shoulder surgery.

After the claimant's surgery, the employer understood the claimant would contact the employer when he was again available to work. The claimant's worker's compensation physician released the claimant to work without any work restrictions on April 7 or 8, 2008. The employer

talked to the claimant about going to a job assignment on the same day the claimant had to report to his regular, full time employer. On April 14, the claimant's regular employer told the claimant he was laid off from work. The claimant then contacted the employer for an assignment. The employer assigned the claimant to a job.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5-1, 2-a. The reasons for the claimant's employment separation with the employer in late September occurred because the claimant needed surgery as the result of a work-related injury he received while working for his full time or regular employer. After the claimant was released to return to work in April 2008, he contacted the employer and asked about another job assignment. The employer assigned him to a job. Under Iowa Code § 96.5-1-d, the claimant is not disqualified from receiving benefits based on his late September employment separation with the employer.

In reality the claimant was on a leave of absence with the employer from late September 2007 through April 2008. The evidence indicates the claimant continues to work for the employer in the same manner that he has always worked for the employer. Therefore, the employer's account will not be charged during the claimant's current benefit year.

**DECISION:**

The representative's May 12, 2008 decision (reference 04) is modified in the employer's favor. The claimant left this employment in late September 2007 because he needed shoulder surgery. After the claimant's physician released him to return to work in April 2008, the claimant talked to the employer about more assignments. The employer assigned the claimant to job. Under these facts, the claimant is qualified to receive benefits as of April 4, 2008, provided he meets all other eligibility requirements. The employer's account, however, will not be charged during the claimant's current benefit year.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css