

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW D HENDERSON
Claimant

APPEAL NO. 07A-UI-04240-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVERSIDE STAFFING SERVICES INC
Employer

**OC: 03/18/07 R: 04
Claimant: Respondent (4)**

Section 96.5-2-a – Discharge
Section 96.5-1 – Voluntary Quit of Part-Time Job

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 12, 2007, reference 01, that concluded the claimant was qualified to receive unemployment insurance benefits based on his separation from the employer. A telephone hearing was held on May 10, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, John Graupmann. Karrie Minch participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer on an assignment as a customer service representative at Mediacom from December 18, 2006, to March 21, 2006.

The claimant was removed from a full-time assignment at Mediacom for attendance issues. On March 19, 2006, the claimant was not able to clock in on his computer. Mediacom initially considered the claimant late but later determined the late clock-in was not the claimant's fault. The claimant left work early with notice to his supervisor on March 20 due to medical problems that required him to go to the hospital. He was also in the hospital and unable to work on March 21. The claimant called in to the employer on March 21 and informed the employer that he was in the hospital and was unable to work. The employer later called the claimant and left a message on his voice mail stating that he was being removed from his job at Mediacom because they had strict attendance policies.

The claimant filed a new claim for unemployment insurance benefits with an effective date of March 18, 2007, after he was removed from the Mediacom assignment. The employer is not a

base period employer on the claim. His benefits are based on previous employers. The claimant was not considered to have been discharged from employment with the employer and was considered eligible for another assignment. The claimant contacted the employer on March 22 and 26, but the employer had no work for him.

On April 4, 2007, the claimant was offered and accepted a part-time assignment working as a customer service representative at IVIE and Associates. The claimant worked on April 5, 6, and 9. The claimant initially understood the job was full-time but later discovered the job was only 30 hours per week. He quit the part-time assignment on April 10 to seek full-time employment.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code sections 96.5-1 and 96.5-2-a.

There are two work separations that must be evaluated to decide if the claimant is qualified to receive benefits.

The first separation was the removal from the assignment at Mediacom on March 21, 2007. The law and rules do not give any guidance on how to deal with a removal from an assignment by a staffing company when the staffing company does not consider the employee discharged from employment and continues to provide assignment for the employee. If the removal is treated as a discharge, it would not be for work-connected misconduct, because the attendance problems were due to legitimate medical reasons and with proper notification. The employer has presented no convincing proof that the claimant's removal from the assignment was due to tardiness. The claimant is qualified to receive unemployment insurance benefits based on his separation from work on March 21.

The claimant testified believably that he contacted the employer on March 22 and 26 about another assignment. The preponderance of the evidence shows the claimant kept in contact with the employer regarding his availability to work after March 21.

The second separation from work took place on April 10 when he quit part-time employment.

871 IAC 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

The claimant voluntarily quit employment without good cause attributable to the employer effective April 10, 2007. The job, however, was part-time, and the claimant has sufficient wages from other employers to qualify to receive unemployment insurance benefits.

The employer's account is not presently chargeable for benefits paid to the claimant, since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account will not be subject to charge for benefits paid to the claimant, because he quit part-time employment without good cause attributable to the employer.

DECISION:

The unemployment insurance decision dated April 12, 2007, reference 01, is modified in favor of the employer. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account will not be chargeable for benefits paid to the claimant in a future benefit year.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw