

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK G FLOWERS
Claimant

APPEAL NO. 11A-EUCU-00284-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

RIVERSIDE STAFFING SERVICES INC
Employer

**OC: 03/21/10
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated March 8, 2011, reference 03, which held claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 4, 2011. Claimant participated. The employer did provide the name and telephone number of a representative. The number was dialed and voice mail picked up. A detailed message was left for the employer. After some testimony was taken from the claimant, the administrative law judge became concerned that the wrong employer may have been called and double checked the records. The correct employer was identified and a call was placed to that individual. The phone number was out of order. A second call was placed to be certain. No message could be left. The employer did not participate in the hearing. The record consists of the testimony of Mark Flowers.

ISSUE:

Whether the claimant was discharged for misconduct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a temporary employment agency. The claimant accepted a job with Group 0, which repaints parts for John Deere. The claimant began working on this assignment on November 8, 2010.

The claimant called his employer prior to the start of shift on January 6, 2011, that he would be unable to come to work due to illness. On January 7, 2011, the claimant intended to again call and report his absence due to illness. Before he could do so, he received a message saying that he was terminated.

REASONING AND CONCLUSIONS OF 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.

871 IAC 24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of a worker's duty to the employer. The employer has the burden of proof to show misconduct.

There is no evidence of misconduct in this case. The claimant's testimony, which is the only evidence, established that the claimant was ill on January 6, 2011, and that he properly notified his employer of his absence. He was still ill on January 7, 2011, and had intended to report his absence again to his employer. Before he could do so, however, he was terminated. Although excessive unexcused absenteeism can be misconduct, the evidence showed a single absence for personal illness that was properly reported. A single instance of what the law deems an

excused absence, because it was for personal illness properly report, is not misconduct. Benefits are allowed if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated March 8, 2011, reference 03, is affirmed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs