

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY F MILLS
Claimant

APPEAL NO. 10A-UI-12166-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPHERION STAFFING LLC
Employer

**Original Claim: 08/01/10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated August 27, 2010, reference 01, which denied benefits based upon the claimant's separation from Spherion Staffing LLC. After due notice was issued, a telephone hearing was held on October 19, 2010. The claimant participated personally. Participating as a witness for the claimant was James Pennelo. The employer participated by Shanoa Lemke.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits..

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Timothy Mills was employed by Spherion Staffing LLC most recently from April 19, 2010, until July 24, 2010, when he was discharged. Mr. Mills was assigned to work at CCB Packaging Company as an assembler and was paid by the hour. Mr. Mills was discharged after he failed to report for scheduled work on July 23, 2010, and did not notify Spherion Staffing or the client employer, CCB Packaging Company, as required.

Although Spherion Staffing had left a message for Mr. Mills that he had been discharged, the claimant nonetheless reported to the client location on Saturday, July 24, 2010, but was sent home from work by the client employer when Mr. Mills smelled of alcohol. The claimant was incarcerated that day, Saturday, July 24, 2010.

Spherion Staffing had made a decision to terminate Mr. Mills from his employment effective July 24, 2010, based upon his previous attendance record and warnings that had been served upon him and based upon his final failure to report for scheduled work or to provide notification on Friday, July 23, 2010, as required by company policy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was discharged under disqualifying conditions.

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(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The evidence in the record establishes that Mr. Mills had been absent in the past and had been warned by Spherion Staffing regarding his attendance. Mr. Mills was aware that he was required to call in to report impending absences both to Spherion Staffing as well as to the client employer. The evidence in the record establishes that the claimant did not report for work on Friday, July 23, 2010, and provided no notice to either the client employer or to his employer, Spherion Staffing. Based upon the claimant's previous attendance record and the warnings that had been served upon him, a decision was made to terminate Mr. Mills from his employment at that time. Although a message was left for the claimant indicating that he had been discharged

from work, the claimant nonetheless reported to the client employer the following day and was sent home from work because he smelled of alcohol. The claimant was subsequently incarcerated.

Although the administrative law judge is aware that Mr. Mills believes that he was sent home on July 24, 2010, because the client employer disliked him because of a previous incident, the administrative law judge nonetheless concludes that the claimant's discharge took place on July 24, 2010, based upon the claimant's unexcused absence and his failure to provide notification as required by company policy. Benefits are withheld.

DECISION:

The representative's decision dated August 27, 2010, reference 01, is affirmed. The claimant is disqualified. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw