

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLAS J BIRCH
Claimant

APPEAL NO: 10A-UI-12427-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 06/06/10
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's August 26, 2010 determination (reference 02) that disqualified him from receiving benefits and held the employer's account exempt from charge because the claimant had been discharged for disqualifying reasons. The claimant participated in the hearing with his witness, Melissa Fondelo. Mike Schaul, the owner, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant registered to work for the employer's customers in August 2009. The claimant worked at one assignment, August 17 through September 10, 2009. The employer did not assign the claimant to another job until April 14, 2010.

On April 14, the employer assigned the claimant to a one-day assignment at Berry Plastics. A Berry Plastics supervisor asked the claimant to go home early because the claimant was falling asleep.

The next day, the claimant went to the employer's office for his wages and asked for more work. The employer did not assign the claimant to another job. The claimant explained what had happened at Berry Plastics.

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. 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. Iowa Code § 96.5-1-j.

The facts establish the claimant was assigned a one-day job assignment on April 14, 2010. The client sent the claimant home a few hours early because the claimant was falling asleep. When the claimant picked up his paycheck the next day for the work he had done, he asked about another job. The employer did not assign him another job.

This employment separation could be viewed in two ways. First, as a one-day assignment that the claimant worked as long as the client wanted him and that the claimant made a timely request for another job. Under Iowa Code § 96.5-1-j, the claimant is not disqualified from receiving benefits based on these facts.

The next way to look at the claimant's April 14, 2010 employment separation is that the client let him go early or discharged him because he was falling asleep at work. While falling asleep at work may be a justifiable business reason for asking the claimant to leave the assignment early and not assigning him to another job, this isolated incident does not amount to work-connected misconduct.

Under either scenario, the claimant is qualified to receive benefits based on his April 14, 2010 employment separation with this employer. Therefore, as of June 6, 2010, the claimant is qualified to receive benefits.

DECISION:

The representative's August 26, 2010 determination (reference 02) is reversed. If the claimant quit, he did not quit for reasons that qualify him to receive benefits. If the claimant was discharged, he was not discharged for reasons that constitute work-connected misconduct. Therefore, as of June 6, 2010, 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