

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES E COSBY
Claimant

APPEAL NO: 14A-UI-11649-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC
Employer

OC: 05/04/14
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's October 30, 2014 (reference 03) determination that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant's employment ended for non-disqualifying reasons. The claimant did not respond to the hearing notice or participate at a December 2, 2014 hearing. Nicole Petersmith, a customer service representative, appeared on the employer's behalf.

On December 5, 2014 the claimant contacted the Appeals Bureau and asked that the hearing be reopened. He had not called in for the December 2 hearing because he did not receive the hearing notice. The claimant's request to reopen the hearing was granted.

Another hearing was scheduled on January 6, 2015. The claimant was called for the hearing, but he was not available. He did not respond to the message left by the administrative law judge. Nicole Petersmith again appeared on the employer's behalf.

Since the claimant did not participate at either scheduled hearing, this decision is based on the evidence presented at the December 2 hearing, the employer's arguments, and the law. The administrative law judge concludes the claimant is qualified to receive benefits.

ISSUE:

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

FINDINGS OF FACT:

The claimant started his last assignment for the employer, a temporary staffing firm, on August 21, 2014. After the claimant worked just one day, the client asked the employer to remove the claimant from this assignment because he did not have the necessary skills needed for the job. Petersmith told the claimant this job assignment was over and talked to him about other assignments that day. The claimant did not accept any other job during this conversation.

The employer has sent text messages to the claimant about other jobs, but he has not contacted the employer after August.

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 discharge him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. A claimant, who is a temporary employee of a temporary employment firm, may be disqualified from receiving unemployment insurance benefits if he 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 in writing about the three-day notification rule and that a claimant may be disqualified from receiving unemployment insurance benefits if she fails to timely notify the employer a job has been completed. Iowa Code § 96.5(1)j. Even though the employer considers the claimant to have voluntarily quit because he has not contacted the employer after August, when the claimant and Petersmith talked about other job opportunities on August 21 or 22, the claimant satisfied the requirements of Iowa Code § 96.5(1)j..

The claimant's job ended on August 21 when the client did not want him to return. For unemployment insurance purposes, the employer initiated this employment separation. The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a).

The client ended the job assignment after concluding the claimant did not have the necessary skills for the job. Unsatisfactory work performance due to inability does not amount to work-connected misconduct. For unemployment insurance purposes, the claimant's job assignment ended on August 21 for reasons that do not amount to work-connected misconduct. Based on the reasons for this employment separation, the claimant is not disqualified from receiving benefits.

DECISION:

The representative's October 30, 2014 (reference 03) determination is affirmed. The claimant's August 21, 2014 employment separation does not disqualify him from receiving benefits. The employer's account is subject to or exempt from charge based on determinations that were made when the claimant established his claim in early May 2014.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/can