

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL L DELLACA**  
Claimant

**APPEAL NO: 13A-UI-12250-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**  
Employer

**OC: 12/16/12**  
**Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's October 29, 2013 determination (reference 03) that held the claimant qualified to receive benefits and the employer's account subject to charge because his September 30 employment separation was for nondisqualifying reasons. The claimant participated in the hearing. Michael Payne, Michelle Morales, and John Ritter appeared on the employer's behalf. During the hearing, Employer Exhibits One and Two and Claimant Exhibits A, B and C were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant

**ISSUE:**

Did the claimant voluntarily quit his employment without good cause or did the employer discharge him for reasons constituting work-connected misconduct?

**FINDINGS OF FACT:**

The claimant registered to work for the employer, a staffing agency, in September 2012. The claimant's most recent assignment at Syngenta started in January 2013. The claimant was injured at work on July 26, 2013. As a result of the work-related injury, he had appointments to go to during the work day. The claimant also had work restrictions. (Claimant Exhibit C.)

On September 27, the claimant asked for a meeting with the employer's on-site representative and his Syngenta supervisor, T.A. (Employer Exhibit Two.) T.A. was not happy about the claimant's absences. When the claimant went to medical appointments, he told the employer's on-site representative about his appointments. During this meeting, the claimant signed a warning that he needed to have better communication regarding his medical appointments. (Claimant Exhibit B.) The claimant had a physical therapy appointment scheduled at 1 p.m. that day.

The claimant left work for his 1 p.m. scheduled appointment. Before the claimant left for this appointment, the employer's on-site representative left him a message but had not told him that she had changed his appointment from 1 to 3 p.m. so he would not have to miss so much work. (Claimant Exhibit C.) Since T.A. understood the claimant's appointment had been changed to

3 p.m., he did not understand why the claimant left work before 1 p.m. After learning the claimant went to his appointment at 1 p.m., T.A. then did not understand why the claimant did not return to work after his appointment. The claimant did not return to work because he takes pain medication when he has physical therapy and is unable to work after he has taken pain medication.

On September 30 before work began, the claimant and T.A. talked. During this conversation, T.A. questioned the claimant about where he was at the afternoon of September 27. (Employer Exhibit One.) The claimant left work after T.A. asked him for his badge. After the claimant gave T.A. his badge he understood he no longer worked at Syngenta. After the claimant left Syngenta on September 30, he called and left a message for the employer's on-site Syngenta representative. His message indicated that he was not going to work until the employer's representative and T.A. resolved communication issues between themselves and the claimant's on-going work-related appointments. Later in the morning, the claimant left the representative another message that T.A. had told him he was done. The employer did not contact the claimant to answer his question about whether he was working the next day or not.

The employer received information that T.A. understood the claimant quit when he left work early on September 30, 2013. (Employer Exhibit One.) Although the employer offered the claimant office work on October 3, the claimant declined office work on October 3 and 4 because he already had other appointments and interviews scheduled.

The claimant filed an additional claim the week of October 6, 2013. He has filed for and received benefits since October 6, 2013.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a. The claimant's testimony is credible and must be given more weight than the employer's reliance on hearsay information from T.A. The evidence establishes T.A. asked for the claimant's badge the morning of September 30 which then effectively ended the claimant's employment at Syngenta. Since the claimant contacted the employer the morning of September 30, the employer had an opportunity to resolve issues between the claimant, T.A., and the employer's on-site representative but did not. For unemployment insurance purposes, the employer ended the claimant's assignment at Syngenta. The claimant did not quit.

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 evidence establishes the claimant was unable to work his scheduled shifts because of appointments he had that were connected with his work-related injury. The claimant may not have clearly communicated all of his appointments to the employer's representative, but the facts do not establish that he committed work-connected misconduct before September 30. On September 30, the employer ended the claimant's Syngenta assignment for business reasons. These reasons do not establish that the claimant committed work-connected misconduct. As of October 6, 2013, the claimant is qualified to receive benefits.

During the claimant's current benefit year, the employer is not one of the claimant's base period employers. The employer's account will not be charged during the claimant's current benefit year. If the claimant establishes a new benefit year after December 14, 2013, and he is qualified to receive benefits, the employer's account may at that time be subject to charge.

**DECISION:**

The representative's October 29, 2013 determination (reference 03) is affirmed. The claimant did not voluntarily quit his assignment at Syngenta. Instead, this assignment ended for business reasons, but the claimant did not commit work-connected misconduct. As of October 6, 2013, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. During the claimant's current benefit year, the employer's account will not be charged. If the claimant establishes a new benefit year, after December 14, 2013, the employer's account then may be subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs