

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAUL A BERRY**  
Claimant

**APPEAL NO: 08A-UI-00794-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RIVERSIDE STAFFING SERVICES INC**  
Employer

**OC: 12/02/07 R: 04  
Claimant: Appellant (5)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Paul A. Berry (claimant) appealed a representative's January 16, 2008 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Riverside Staffing Services, Inc. (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 6, 2008. The claimant participated in the hearing. Karrie Minch, a senior staffing representative, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**FINDINGS OF FACT:**

The claimant started working for the employer on December 26, 2006. The claimant left this job assignment for another job on February 12, 2007. When the new job did not work out, the claimant asked the employer if he could go back to his former job assignment. The claimant started working for the same client again on March 14, 2007. The last day the claimant worked was April 3, 2007. On April 4, 2007, the claimant called the employer to report he had transportation problems and could not get to work. The employer has no record of the claimant calling to report he was unable to work on April 5, 6 and 9. When the claimant had not reported to work or called the employer or the client these days, the client reported that the claimant had not reported to work since April 3.

As a result of the client's call, the employer then contacted the claimant. The claimant had no excuse for not calling the employer anytime after April 4, 2007. The employer then informed the

claimant that the employer would not assign him to another job because of the three no-call, no report days.

**REASONING AND CONCLUSIONS OF LAW:**

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. The evidence establishes the employer discharged the claimant.

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is 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 are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The claimant understood he was required to call the employer when he was unable to work as scheduled. During the hearing, the claimant asserted he did not call the employer after April 4 because his cell phone had died and he did not have a charger. This may have occurred, but the claimant could have used another phone to contact the employer. Based on the employer's records, the claimant did not call or report for three consecutive days. This conduct amounts to an intentional and substantial disregard of the standards of behavior the employer has a right to expect from an employee. As of December 2, 2007, the claimant is not qualified to receive unemployment insurance benefits.

**DECISION:**

The representative's January 16, 2008 decision (reference 02) is modified, but the modification has no legal consequence. The claimant did not voluntarily quit his employment. Instead, the employer discharged him for work-connected misconduct. The claimant is disqualified from receiving unemployment insurance benefits as of April 9, 2007. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs