

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTOPHER SKIDMORE  
169 SHERMAN ST  
MUSCATINE IA 52761-5546**

**APPEAL NO: 09A-UI-17887-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEAM STAFFING SOLUTIONS INC  
116 HARRISON ST  
MUSCATINE IA 52761-5321**

**APPEAL RIGHTS:**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

**YOU MAY REPRESENT** yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTOPHER SKIDMORE**  
Claimant

**APPEAL NO: 09A-UI-17887-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEAM STAFFING SOLUTIONS INC**  
Employer

**OC: 11-01-09**  
**Claimant: Appellant (2)**

Section 96.5-2-a – Discharge/Misconduct

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 25, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 7, 2010. The claimant participated in the hearing. Mary Kirchner, Account Executive and Sarah Fiedler, Claims Administrator, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the employer discharged the claimant for work-connected misconduct.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time general laborer for Team Staffing Solutions last assigned to Grain Processing Corporation from November 24, 2008 to October 30, 2009. He started as an operator but because of poor job performance he was moved to a general laborer position on the clean-up crew rather than be dismissed from the job assignment. The client asked that he be removed from the assignment October 30, 2009, because of his attendance and his work performance. The claimant called the employer Friday, January 2, 2009, and reported he was ill. The employer talked to him about his attendance because the client said he was absent on other days that he had not called the employer. On Monday, February 23, 2009, and Monday, April 6, 2009, he called the employer and reported he was ill. On April 6, 2009, the employer again talked to him about his attendance and indicated it was noticing a pattern of call ins on Mondays and Fridays. On August 4, 2009, the claimant called in and reported he was ill. He went on a pre-planned vacation from September 21 through September 25, 2009, that he cleared with the employer and client before accepting the assignment. On Monday, October 19, 2009, the claimant called in and reported he would not be at work but did not provide a reason for his absence. On October 20, 2009, the claimant called in and reported he was ill. The employer called him again about his attendance and said the client depended on him and he could expect a written warning from his supervisor. He was absent October 21 through October 27, 2009, because he had the H1N1 flu. Throughout the time the claimant worked as a general laborer the client had numerous complaints that he was not doing his fair share of

shoveling the spilled grain but instead would always jump on the end loader and leave the shoveling to other employees. The employer's witness testified the client talked to the claimant about his actions several times and he would show improvement for a few days and then resume getting on the end loader before anyone else had a chance to do so. The claimant denies using the end loader any more often than other employees and believes he did his fair share of shoveling. He testified that the client never spoke to him about using the machines too often and not taking his turn shoveling. The employer received an e-mail from the client October 30, 2009, asking that the claimant be removed from the assignment because he was not doing his fair share of shoveling even after being told he needed to and because he was absent more often than anyone else on the crew. The employer told the claimant that the assignment was over and the claimant called in to report he was available for work November 9, 16, 23, December 2 and 8, 2009. He refused an offer of warehouse work November 25, 2009, at Syngenthe on first or second shift, making \$9.50 or \$10.00 per hour in Lone Tree, Iowa, because he felt it was too far away from Muscatine and the wages were not suitable.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.

Iowa Code section 96.5-3-a provides:

An individual shall be disqualified for benefits:

3. Failure to accept work. If the department finds that an individual has failed, without good cause, either to apply for available, suitable work when directed by the department or to accept suitable work when offered that individual. The department shall, if possible, furnish the individual with the names of employers which are seeking employees. The individual shall apply to and obtain the signatures of the employers designated by the department on forms provided by the department. However, the employers may refuse to sign the forms. The individual's failure to obtain the signatures of designated employers, which have not refused to sign the forms, shall disqualify the individual for benefits until requalified. To requalify for benefits after disqualification under this subsection, the individual shall work in and be paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

a. In determining whether or not any work is suitable for an individual, the department shall consider the degree of risk involved to the individual's health, safety, and morals, the individual's physical fitness, prior training, length of unemployment, and prospects for securing local work in the individual's customary occupation, the distance of the available work from the individual's residence, and any other factor which the department finds bears a reasonable relation to the purposes of this paragraph. Work is suitable if the work meets all the other criteria of this paragraph and if the gross weekly wages for the work equal or exceed the following percentages of the individual's average weekly wage for insured work paid to the individual during that quarter of the individual's base period in which the individual's wages were highest:

(1) One hundred percent, if the work is offered during the first five weeks of unemployment.

(2) Seventy-five percent, if the work is offered during the sixth through the twelfth week of unemployment.

(3) Seventy percent, if the work is offered during the thirteenth through the eighteenth week of unemployment.

(4) Sixty-five percent, if the work is offered after the eighteenth week of unemployment.

However, the provisions of this paragraph shall not require an individual to accept employment below the federal minimum wage.

The employer has the burden of proving disqualifying misconduct. 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 substantial and 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). While the employer testified the claimant's assignment ended because of his attendance and his failure to do his fair share of shoveling grain, eleven of his twelve absences, including his last absence, and not counting his vacation, were due to properly reported illness and as such, do not rise to the level of disqualifying job misconduct. With regard to the client's report that he did not do his fair

share of shoveling grain, the claimant credibly testified he was never warned about shoveling and that he did not believe he spent any more time on the end loader than any of the other employees on his crew. The employer did not provide the information sheet it gives to employees about what to do when an assignment ends so it could be determined if that was contained on a separate piece of paper as required by law and did not tell the claimant to call weekly to report his availability when it told him his assignment was over. Employees are expected to call in to let the employer know they are available for work and the claimant did make a reasonable effort to call the employer, calling five times in November and December 2009. The job offer at Syngenthe was not suitable because it was made in the first five weeks of his unemployment and did not equal 100 percent of his average weekly wage of \$710.98. For the reasons stated above, the administrative law judge concludes the employer has not met its burden of proving disqualifying job misconduct, that the claimant failed to seek reassignment for work or that he refused a suitable offer of work. Therefore, benefits are allowed.

**DECISION:**

The November 25, 2009, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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