

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN J TIMM
Claimant

APPEAL NO. 10A-UI-09988-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS
Employer

**Original Claim: 05/30/10
Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated July 14, 2010, reference 03, which denied benefits based upon his separation from Team Staffing Solutions, Inc. After due notice was issued, a telephone conference hearing was held on August 31, 2010. The claimant participated. The employer participated by Sarah Fiedler.

ISSUE:

At issues is whether the claimant was separated for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: The claimant was employed by Team Staffing Solutions from September 18, 2009, until October 9, 2009, due to failure to report for work or provide proper notification of his impending absences. Mr. Timm began his most recent assignment on September 18, 2009. The claimant failed to report or provide notification on October 8, 2009, and did not report or provide notification prior to the beginning of his work shift the following day, October 9, 2009. Based upon the claimant's failure to report for scheduled work or provide the required notification, the client company to which he was assigned no longer wished to allow Mr. Timm to provide services at that location and the claimant was separated from his employment.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes conduct sufficient to warrant the denial of unemployment insurance benefits. It does.

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.

The Supreme Court of Iowa in the case of Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984), held that unexcused absenteeism is a form of misconduct. The Court held that absence due to illness or other excusable reasons is deemed excused if the employee properly notifies the employer. The evidence in the record establishes that Mr. Timm did not properly notify the employer of his impending absence, causing the client company to request that Mr. Timm no longer be assigned to their account, and his failure to report or provide proper notification showed a disregard for the employer's interests and standards of behavior and thus was disqualifying conduct under the provisions of the Employment Security Act. Benefits are withheld.

DECISION:

The representative's decision dated July 14, 2010, reference 03, is affirmed. The claimant is disqualified until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw