

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CALVIN D PORTER
Claimant

APPEAL NO. 08A-UI-02399-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC
Employer

OC: 01/27/08 R: 03
Claimant: Appellant (2)

Section 96.5-1-j - Voluntary Quit of Temporary Employment

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated March 3, 2008, reference 03, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on March 25, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer because the person scheduled to participate, Angie Wheelock, was not available for the call.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant was never notified about any requirement to contact the employer within three days of completing a job assignment to request a new assignment.

The claimant worked on a two-day assignment for the employer for in early December 2007. He reported about one hour late for work the second day and was informed by the employer that he was removed from the assignment. The person did not offer the claimant any additional work or advise him to contact the employer about another assignment. The claimant sought work elsewhere.

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 27, 2008. The wages paid to the claimant by the employer in December 2007 are not base period wages for this claim.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.5-1-j provides that individuals employed by a temporary agency must contact their employer within three working days after the completion of a work assignment and seek a new assignment or they will be considered to have voluntarily quit employment without good

cause attributable to the employer, provided that the employer has given them a statement to read and sign that advises them of these requirements.

The claimant is not subject to disqualification under Iowa Code § 96.5-1-j, because he was not informed about any requirement to contact the employer within three days of completing a job assignment to request a new assignment. The removal of the claimant from a job assignment amounts to a discharge.

The next issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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.

Reporting to work late on one day does not meet the definition of work-connected misconduct under the unemployment insurance law. The claimant is not disqualified from receiving benefits based on his discharge from the employer. He, however, remains disqualified due a separation from employment with USA Staffing on August 16, 2007, unless he can show he earned wages of at least ten times his weekly benefit amount after that separation.

Since the wages paid by the employer were not paid during the base period, the employer is not subject to charge based on these wages. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

DECISION:

The unemployment insurance decision dated March 3, 2008, reference 03, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. He, however, remains disqualified due a separation from employment with USA Staffing on August 16, 2007, unless he can show he earned wages of at least ten times his weekly benefit amount after that separation.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw