

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**STEVEN G BATTEAU
1806 NEW HAMPSHIRE
MUSCATINE IA 52761**

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

**Appeal Number: 05A-UI-11449-H2T
OC: 10-02-05 R: 04
Claimant: Appellant (1)**

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 the **Employment Appeal Board, 4th 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.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Leaving
Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 4, 2005, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on November 28, 2005. The claimant did participate. The employer did participate through Bill Ramsey Claims Specialist and Mary Kirchner, Account Manager.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was assigned to work at HWH Corporation as a packer/general laborer full time beginning April 19, 2005 through June 8, 2005 when he voluntarily quit his assignment at HWH. On June 9 the claimant went to Team Staffing Solutions to pick up his paycheck. At that time

he told Mary Kirchner that he would not return to HWH to continue working because he did not like his Supervisor. During that same meeting the claimant also informed Ms. Kirchner that he had sustained a work related injury sometime that week. Ms. Kirchner set up an appointment for the claimant for medical treatment for the next day June 10. The claimant had been given a copy of the employer's drug and alcohol testing policy which provided failure to take or submit to a urinalysis when requested was ground for dismissal. The policy required that employees receiving medical treatment for a work related injury undergo a drug test. At his doctor's appointment the claimant was asked to provide a urine sample. He refused to provide the sample because he did not have to urinate at that time. The nurse called Ms. Kirchner and indicated that the clinic would be willing to stay open and wait for the claimant to provide the sample, but the claimant did not want to wait. Ms. Kirchner spoke to the claimant on the phone and told him that if he failed to stay and provided a urine sample he would be discharged from Team Staffing Solutions. The claimant chose not to stay and wait until he had to urinate and left the doctor's office without providing a urine sample. The claimant was discharged from Team Staffing Solutions on June 10 for failing to take a drug test.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment with HWH without good cause attributable to the employer.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

871 IAC 24.25(21)(22) provide:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(21) The claimant left because of dissatisfaction with the work environment.

(22) The claimant left because of a personality conflict with the supervisor.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2 (amended 1998). The claimant voluntarily quit working for HWH, his assigned employer because he did not like the work environment or his supervisor. His leaving HWH was without good cause attributable to the employer. Benefits are denied.

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment with Team Staffing Solutions due to job-related misconduct.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The claimant received a copy of the employer's drug and alcohol testing policy and was put on notice that if he failed to provide a urine sample after making a work related injury complaint he would be discharged. The doctors office staff was willing to stay and wait for the claimant to have to urinate but the claimant chose to leave rather than provide the sample. The claimant was warned that his failure to provide the urine sample would result in his discharge. The claimant could have waited and provided the urine sample. The claimant's failure to provide the sample is misconduct sufficient to disqualify him from receiving unemployment insurance benefits. Benefits are denied.

DECISION:

The November 4, 2005, reference 01, decision is affirmed. The claimant voluntarily left his employment with HWH without good cause attributable to the employer. The claimant was

discharged from employment with Team Staffing Solutions due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

tkh/tjc