IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

TODD EBLE
Claimant

ADVANCE SERVICES
Employer

APPEAL NO. 07A-UI-03985-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 03-18-07 R: 01
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 5, 2007, reference 03, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 2, 2007. The claimant provided a phone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Brandi McFarland, Office Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One, Two and Three, were admitted into evidence.

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 production worker for Advance Services last assigned at Farleys and Sathers from February 6, 2007 to March 16, 2007. He was discharged for excessive absenteeism. The claimant was late February 9, 2007, because he went into a ditch; he was absent February 13, 2007, due to weather; he was absent February 23, 2007, because of properly reported illness; he left early February 26, 2007, because of illness; he was absent February 27, 2007, because of properly reported illness; he called in March 9, 2007, because he thought he had gout and was going to the doctor; he called in to the client March 11, 2007, because of his foot problem but did not notify the employer of his absence; he called in March 12, 2007, to report he had his toe drained and could not work; he called in March 13, 2007, for the same reason; he called in March 14, 2007, and stated he had a doctor's note for his absence; and he left a note at the client's guard shack March 16, 2007, stating he was ill and had to go home and neither the employer nor the client considered his absence properly reported and the client ended his assignment due to attendance (Employer's Exhibits Two and Three). The claimant received a written warning February 16, 2007, due to his attendance (Employer's Exhibit Two). Under the employer's policy, employees have three days

to contact the employer after the completion of an assignment. In this case the employer notified the claimant that his assignment ended March 16, 2007, and the claimant asked for additional work and, consequently, the employer had notice of the claimant's availability when he asked for further assignments but the employer has not had any positions available for him since his separation.

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 and did seek reassignment from the employer.

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(7) provides:

> (7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Because all but two of the claimant's absences were due to properly reported illness and he was ill March 16, 2007, no final or current incident of unexcused absenteeism has been established and no disqualification is imposed for the separation.

Iowa Code section 96.5-1-j 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, But the individual shall not be disqualified if the department finds that:
>
> j. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had

good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

For the purposes of this paragraph:

(1) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(2) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

871 IAC 24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of the temporary assignment. The employer notified the claimant that his assignment ended so it obviously had notice of the claimant's availability, especially in light of the fact the claimant asked for other work at that time but the employer did not have any work available at that time or any time since then. Consequently, the claimant did seek reassignment from the employer. Benefits are allowed.

DECISION:

The April 5, 2007, reference 03, decision is affirmed. 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

_____
Decision Dated and Mailed

je/css