

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN M THOMPSON
Claimant

APPEAL NO. 12A-UI-10289-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACOBSON STAFFING COMPANY LC
Employer

OC: 07/29/12
Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 20, 2012, reference 01, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on September 24, 2012. The parties were properly notified about the hearing. The claimant participated in the hearing. Kristin Moore participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked on an assignment in the shipping and receiving department at Hach Chemical from February 26 to July 23, 2012. His shift was from 10:30 p.m. to 7 a.m.

The claimant was absent from work on March 14, March 15, May 15, June 27, and July 19. These absences were due to childcare problems caused by undependable babysitters being unexpectedly unavailable. He notified the employer when he missed work.

On July 20, 2012, the claimant went to the employer's office to pick up his check. He was told that he needed to sign an attendance write-up before he could get his check. He signed the write-up, which said the employer could terminate him if he was late or absent again during the next 60 days.

The claimant returned to work on the evening of July 22. His key to enter the plant would not work, but a coworker let him in. He punched in and worked his shift until 7 a.m. on July 23. He asked the night shift supervisor about why his key would not work, but the supervisor did not know.

On the afternoon of July 23, the office manager informed that he was being discharged for allegedly having an altercation with someone at Hach on July 17, 2012, and for attendance. The claimant had no altercation with any employee at Hach.

REASONING AND CONCLUSIONS OF LAW:

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

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly that he had no altercation with any employee at Hach. The office manager had no credible evidence about what allegedly happened. The attendance issues would not provide grounds for terminating the claimant, because the claimant had just received a warning for this and never violated the warning afterward.

DECISION:

The unemployment insurance decision dated August 20, 2012, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw