

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAVIER IBARRA
Claimant

APPEAL NO. 10A-UI-00105-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

**Original Claim: 08/09/09
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated December 29, 2009, reference 03, that concluded he voluntarily quit employment without good cause attributable to the employer. A telephone hearing was held on February 24, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Darren Robinson. Sarah Fiedler 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 service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked full-time for the employer on an assignment at Alaniz LLC from September 3, 2009, to November 19, 2009.

The claimant was sick and unable to work on November 20, 2009. He called and notified personnel at Alaniz LLC, as he had been instructed to do by Alaniz LLC if he missed work. He had previously informed Alaniz LLC that he did not want to work the overtime hours that were available on November 21. He understood these overtime hours were not mandatory. Alaniz notified the employer that the claimant was refusing to work required overtime.

The claimant was ready to go back to work as scheduled on November 23 but received a phone call from a friend that someone with the employer needed to talk to him. He called the employer and spoke to someone who told the claimant that Alaniz no longer needed his services. The claimant asked if there was another assignment and was told there was no work available at that time.

The employer's account is not presently chargeable for benefits paid to the claimant, since it is not a base period employer on the claim.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct.

Iowa Code § 96.5-1 and 96.5-2-a. 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 about the phone conversation he had on November 23. The employer's evidence to the contrary was hearsay from a person who was not present at the hearing. The claimant's credible testimony is entitled to more weight.

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 employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. Lee v. Employment Appeal Board, 616 N.W.2d 661, 665 (Iowa 2000).

No willful and substantial misconduct has been proven in this case. The evidence fails to prove the claimant refused mandatory overtime or otherwise committed disqualifying misconduct.

The employer's account is not presently chargeable for benefits paid to the claimant, since it is not a base period employer on the claim. 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 December 29, 2009, reference 03, 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