

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH M BRANSTNER
Claimant

APPEAL NO: 13A-UI-00440-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMPLOMENT CONNECTIONS INC
Employer

**OC: 12/16/12
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a - Discharge

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's January 11, 2013 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the claimant had been discharged for an incident that was not a current act of misconduct. The claimant participated in the hearing. Jim Kitterman, the owner, and Deb Lenz, the branch manager, appeared on the employer's behalf. During the hearing Employer Exhibits One through Six were offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

ISSUE:

Did the employer discharge the claimant for reasons constituting a current act of work-connected misconduct?

FINDINGS OF FACT:

The employer is a staffing agency that assigned the claimant to a client on June 6, 2011. The claimant worked as a full-time machine operator for the client. On a yearly basis, the client decides if a person the employer assigned to work for the client is hired by the client.

The employer required the claimant to contact both the employer and client when he was unable to work as scheduled. The employer also expected the claimant to contact the employer when the client gave him time off. During his employment, the claimant did not understand the employer required him to contact the employer if the client approved any time off or let him go home early. After the claimant had received documents for the hearing, he then understood the employer's notification requirement.

In late June and July 2011, the claimant was absent 13 days for illness or a work-related injury. Any time the claimant was unable to work, he contacted the client. Although Paige Morris signed a written warning on October 31, 2011, for on-going attendance issues, the employer did not have the claimant sign this warning. (Employer Exhibit One.)

On February 8, 2012, the client's human resource representative informed the employer the claimant had not been hired as a full-time employee because of his awful attendance. (Employer Exhibit Two.) The employer wrote up a written warning for his attendance issues in February 2012. The claimant did not sign this warning until December 11, 2012. (Employer Exhibit Three.)

On November 16, 2012, the employer wrote up a third written warning for the claimant's absences on August 6, 7, 8, September 14, October 22 and November 16, 2012. The claimant did not sign the written warning. (Employer Exhibit Four.) The claimant's August 6, 7 and 8 absences had been approved by the client and employer as vacation days. On September 14, the client's supervisor gave the claimant paid time off for this day. On October 22, the claimant contacted the client but not the employer to report he was ill and unable to work. On November 16, the claimant obtained approval from the client supervisor to take this day off from work.

On December 10, 2012, the employer learned the client decided the claimant would not be hired as a full-time employee because of his on-going attendance issues. When the client decided to end the claimant's temporary assignment, the employer ended the claimant's employment relationship. The employer decided the claimant was not eligible for another assignment because he failed to call the employer whenever he was not at work at the assignment.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5(2)a. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act. 871 IAC 24.32(8).

The law also presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7).

The employer established business reasons for discharging the claimant. The employer acknowledged that if the client had not made the decision to end the claimant's employment, the employer would not have discharged him. The only written warning that advised the claimant in writing to call the employer if he were late or absent was the November 16, 2012, warning the claimant did not sign. (Employer Exhibit Four.)

After his November 16 absence, the claimant did not have any other attendance issues. The employer had the right to end the claimant's employment, but he did not commit a current act of work-connected misconduct. Also, the evidence establishes that even though the employer required the claimant to contact the employer any day the client authorized him time off, the claimant did not understand this requirement. Since the claimant did not commit a current act of work-connected misconduct, he is qualified to receive benefits as of December 16, 2012.

DECISION:

The representative's January 11, 2013 determination (reference 01) is affirmed. The employer discharged the claimant for business reasons, but these reasons do not establish that the claimant committed a current act of work-connected misconduct. Therefore, as of

December 16, 2012, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/tll