

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY BLACK
Claimant

APPEAL NO. 13A-UI-06729-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES STAFFING SERVICES INC
Employer

OC: 05/05/13
Claimant: Appellant (1)

Iowa Code § 96.5(2)(a) - Discharge for Misconduct

STATEMENT OF THE CASE:

Terry Black (claimant) appealed an unemployment insurance decision dated May 23, 2013, reference 01, which held that he was not eligible for unemployment insurance benefits because he was discharged from DES Staffing Services, Inc. (employer) for work-related misconduct. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 11, 2013. The claimant participated in the hearing with his Worker's Compensation Attorney Mike Norris. The employer participated through Stacy Navarro. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a temporary employee from June 14, 2012 through March 20, 2013 when he was discharged for falsifying a worker's compensation claim. He was most recently assigned at Gilcrest Jewett as a general laborer. Gilcrest Jewett Human Resources Administrator Amy Laughlin was going to hire the claimant on as a permanent employee so waited to meet with him after the office closed on Friday, February 8, 2013. He and his driver arrived between 5:30 p.m. and 5:45 p.m. Ms. Laughlin explained the situation to the claimant and told him she was planning on scheduling his physical during the following week if his schedule worked. The claimant told her that he would be available and that anytime was fine. Ms. Laughlin wrote, "He made no mention of being hurt, nor did he seem to be in pain, or even in a bad mood."

On the following morning, the claimant reported he sustained a work-related injury to his right shoulder on February 8, 2013. In interviews with the employer's worker's compensation carrier, AIG, he denied any prior injuries to his right shoulder. The claimant admitted he had right shoulder pain in 1991 or 1992 but denied he sought or required any medical treatment. AIG discovered that the claimant had been seen by an orthopedic on January 30, 2013 for right

shoulder complaints. Medical notes confirmed that he had ongoing right shoulder complaints since 1992. Medical notes also indicate that a prior MRI suggested a rotator cuff tear. On January 30, 2013, Dr. Aviles recommended an MRI, injected the claimant's right shoulder and instructed him to follow up in one month. On the claimant's medical history form completed on January 30, 2013, he admitted prior medical treatment, including right shoulder injections and an MRI in the past.

The employer's worker's compensation insurance carrier sent the claimant a letter dated March 20, 2013 and copied in the employer. The letter stated that the information that was discovered confirmed the claimant was not truthful or forthcoming regarding his right shoulder complaints. The worker's compensation claim was denied since it could not be determined that the claimant sustained any new injury or problem since his medical visit of January 30, 2013. The employer discharged the claimant on that same day.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer discharged the claimant for work-connected misconduct. A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a.

Iowa Code § 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.

The employer has the burden to prove the discharged employee is disqualified for benefits for misconduct. *Sallis v. Employment Appeal Bd.*, 437 N.W.2d 895, 896 (Iowa 1989). The claimant was discharged on March 20, 2013 based on the employer's reasonable belief that the claimant had made a false worker's compensation claim. The employer discharged the claimant on the same date it received confirmation from its insurance company. Dishonesty constitutes a substantial and material breach of the standards of behavior an employer has the right to expect and is, therefore, misconduct within the meaning of the law. Accordingly, benefits are denied.

The conclusions in this case are not binding and do not have any effect in the pending workers' compensation proceeding. Iowa Code § 96.6(4).

DECISION:

The unemployment insurance decision dated May 23, 2013, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits because he was discharged from work for misconduct. Benefits are withheld until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css