

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MATTHEW P MEARS**

Claimant

**APPEAL NO. 15A-UI-11132-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ELITE STAFFING GLOBAL INC**

Employer

**OC: 09/13/15**

**Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit  
Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Elite Staffing Global (employer) appealed a representative's September 30, 2015, decision (reference 05) that concluded Matthew Mears (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 19, 2015. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer was represented by Joseph McDonnell, Employer representative, and participated by Kathy Achenbach, Branch Manager. Exhibit D-1 was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary agency. The claimant was hired on December 30, 2014. On July 27, 2015, he was assigned to work at Precision Pulley and Idler as a full-time saw operator. He suffered a non-work related injury on August 22, 2015, and did not work from August 25 through 30, 2015. The claimant told the employer he was having an MRI on September 10, 2015. The employer told the claimant he needed a release to return to work. The claimant provided the employer with the release on September 21, 2015. The release indicated he had no restrictions. The note from the claimant's doctor also stated that if the pain returned, then limitations would be needed. The employer told the claimant she did not feel comfortable putting the claimant back at his previous job because he might suffer pain again.

The claimant filed for unemployment insurance benefits with an effective date of September 13, 2015. The employer participated personally at the fact-finding interview on September 29, 2015, by Kathy Achenbach.

The employer did not return the claimant to work until October 5, 2015, after the fact-finding interview. The employer returned the claimant to work as a press operator at the same company. On October 7, 2015, the claimant quit work to accept other employment.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

Iowa Admin. Code r. 871-24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984). The employer suspended the claimant from work until October 5, 2015. The employer did not provide any evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

Iowa Code § 96.5-1-a 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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Admin. Code r. 871-24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

(5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. The employment does not have to be covered employment and does not include self-employment.

The claimant left his position with the employer on October 7, 2015, to work for another employer. When an employee quits work to take other employment, he is not disqualified from receiving unemployment insurance benefits. The claimant quit work to take other employment. He voluntarily quit without good cause attributable to the employer. Benefits are allowed because the claimant left to take other employment. The employer will not be charged as of October 11, 2015.

**DECISION:**

The representative's September 30, 2015, decision (reference 05) is affirmed. Benefits are allowed as of September 13, 2015, because the employer has not met its proof to establish job-related misconduct.

The employer will not be charged as of October 11, 2015. Benefits are allowed, provided claimant is otherwise eligible because he left to take other employment.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/pjs