

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY A PAWLIK
Claimant

APPEAL NO. 07A-UI-06425-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEDONA STAFFING
Employer

**OC: 05/27/07 R: 04
Claimant: Appellant (2)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Jeffrey A. Pawlik (claimant) appealed a representative's June 18, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Sedona Staffing (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 16, 2007. The claimant participated in the hearing. Colleen McGuinty and Dawn Fulton appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The employer assigned the claimant to a job assignment on March 6, 2007. The claimant worked and earned wages on March 6. The claimant was ill and notified the employer he was ill on March 7 and 8. On March 8, the claimant went to his doctor. The claimant obtained a doctor's statement indicating he was unable to work until March 12, 2007. The claimant brought the doctor's statement to the employer's office on March 9, 2007.

The claimant went to work at his assigned job on March 12, 2007. The supervisor at the job location informed the claimant he no longer had a job because he had not called or reported to work on March 9. The claimant went to the employer's office to find out why he no longer had a job at the assigned location. The claimant understood the employer's personnel inadvertently forgot to contact the client. The employer did not have another job to assign to the claimant on March 12, 2007.

The claimant returned to the employer's office on March 16 to again report that he was available for work. The employer did not have a job to assign to him this day either. The claimant established a claim for unemployment insurance benefits during the week of May 27, 2007.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment for reasons that do not qualify him to receive unemployment insurance benefits, or if the employer discharges him for work-connected misconduct Iowa Code sections 96.5-1, 2-a. The facts do not establish that the claimant intended to quit his assignment. Instead, he did not report to work on March 9 because he was ill and unable to work. The employer or the employer's client terminated the claimant's assignment on March 9.

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 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).

For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The law 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).

Considering the evidence that is most favorable to the employer, the claimant's assignment ended because he allegedly did not notify the employer on March 9 that he was still ill and unable to work. Since the claimant had contacted the employer on March 7 and 8 to report he was ill and unable to work, if he failed to contact the employer on March 9 this failure does not rise to the level of work-connected misconduct. Under the facts of this case the employer or the client had business reasons for discharging or ending the claimant's assignment. The claimant did not, however, commit work-connected misconduct. As of May 27, 2007, the claimant is qualified to receive unemployment insurance benefits.

The employer is not one of the claimant's base period employers. Therefore, during the claimant's current benefit year, the employer's account will not be charged.

DECISION:

The representative's June 18, 2007 decision (reference 01) is reversed. The claimant did not voluntarily quit his employment. Instead, the employer discharged him for business reasons that do not constitute work-connected misconduct. As of May 27, 2007, the claimant is qualified to receive unemployment insurance benefits. During the claimant's current benefit year, the employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs