

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMAAL LONG
2613 – 27TH PL
DES MOINES IA 50310-5504**

APPEAL NO: 09A-EUCU-00528-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ANKENY TEMPORARY SERVICES LLC
5550 WILD ROSE LANE
WEST DES MOINES IA 50266-5304**

APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMAAL LONG
Claimant

APPEAL NO: 09A-EUCU-00528-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANKENY TEMPORARY SERVICES LLC
Employer

OC: 08-17-08
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 14, 2009, reference 05, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 11, 2010. The claimant participated in the hearing. Jo Woolery, CEO, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time temporary laborer for Ankeny Temporary Services from November 3, 2009 to November 13, 2009. He was assigned to work as a general laborer working varied hours and earning \$9.00 per hour at Dreyer Hauling. On November 10, 2009, the client called at 8:33 a.m. and said the claimant was tardy but was at work by that time. He was late because he accidentally took his wife's keys and had to turn around and return them. The employer's policy is to automatically terminate employment if a claimant is tardy on one occasion but the employer allowed him to continue until it could find a replacement worker. The client called the employees each night to tell them when to be there the next day. On November 11, 2009, the client called the employer and said it took the claimant three hours to remove 14 bolts from a set of bedposts, a charge the claimant vehemently denies. The client also said the claimant was smoking outside while on the job. The claimant testified he did not know he was not allowed to smoke outside while working. On November 12, 2009, the client called and said the claimant was bothering him about paying for the gas he used while using his own vehicle on a move and for which the claimant testified the client said he would pay for the gas. The client said he did not pay for gas and the employer told the claimant it was not his responsibility to do so. Later that day the claimant argued with the client about the gas situation as he made at least three or four trips moving goods in his own vehicle to Grimes from around the Qwik Trip on Northeast 14th Street and was about out of gas. The client said he did not have gas and the client told him he would give him "plenty of gas." After the move the client

was supposed to meet him at a Kum & Go convenience store and give him \$25.00 worth of gas but when the claimant pulled into Kum & Go the client drove past the store. The claimant followed him as they still had more trips to complete and after the fourth trip the claimant again asked about the gas money he was promised and the client started yelling at him and said they were on a timeline. They argued and the client refused to pay for the gas. The client also reported the claimant was still smoking at work and standing around on the job and said he wanted him removed from the assignment but not until after someone else had been found to replace him. The claimant was not aware smoking was not allowed on the job, stating everyone there was smoking and they were smoking in his and other vehicles while driving. The claimant was paid November 13, 2009, but was missing \$161.00 the employer deducted for an application fee and paperwork. The claimant asked the employer about the missing money, thinking child support had been erroneously deducted, and the employer did not tell him it was for the fees. The employer's policy is to put employees on probation for seven days and then the clients decide whether to keep them or not. They are automatically terminated from further assignments if the client does not want them back.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 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 of proving disqualifying misconduct. 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). While the claimant was obviously not a good fit with this client, the employer's policy of charging an employee \$161.00 for an application fee and "paperwork" for what amounts to a seven-day probationary period for a day laborer position is outrageous and unconscionable. That said, generally, it would seem a client would not be responsible for paying an employee's gas costs. However, in this situation, where the claimant was required to use his own vehicle to help with a move, it was not unreasonable for him to ask to be paid for gas for his vehicle and the client agreed he would pay him but failed to do so, which understandably upset the claimant. The claimant was also unaware he was not allowed to smoke outside while at work as other employees were smoking as well. The client told the employer it took the claimant three hours to remove 14 bolts from a set of bedposts but the claimant credibly denied that occurred. The claimant was also tardy on one occasion because he accidentally took his wife's keys with him when he left for work November 10, 2009. Under the employer's policy, that and the smoking were automatic grounds for termination but instead of terminating the claimant's employment immediately the employer kept him until it could find another employee, which seems to defeat the purpose of automatic terminations. Under these circumstances, the administrative law judge must conclude that the claimant's behavior does not rise to the level of disqualifying job misconduct as defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The December 14, 2009, reference 05, decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css