



Unemployment Insurance
Minnesota

Document ID: 131291617



131291617

EMPLOYER SOLUTIONS STAFFING GROUP II
7301 OHMS LN STE 405
EDINA MN 55439-2347

04/10/2015

Employer Account Number: 5044364
SSN: 355-82-4310

Issue Identification Number: 33463206-2

**NOTICE OF DECISION
OF THE UNEMPLOYMENT LAW JUDGE**

Under Minnesota Statutes 268.105, subdivision 1, the enclosed decision of the Unemployment Law Judge is served on you.

NOTICE TO THE PARTIES: The law of the State of Minnesota at Minnesota Statutes 268.105, subdivision 5a, provides that the findings of fact and decision issued are only for unemployment insurance benefit entitlement purposes and do not affect any other legal or contractual matter.

ALSO MAILED TO:

victor colon, APPLICANT



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In the Matter of:

victor colon,

Applicant,

AND

**FINDINGS OF FACT
AND DECISION**

EMPLOYER SOLUTIONS STAFFING GROUP II,
Employer.

An evidentiary hearing, under Minnesota Statutes 268.105, subdivision 1, was conducted on Wednesday, April 8, 2015, as a result of the Employer 's appeal from a Determination of Eligibility issued on Monday, March 23, 2015.

ISSUE(S)

Whether the applicant quit or was discharged. Whether the applicant was discharged because of employment misconduct.

FINDINGS OF FACT

The appeal of Employer Solutions Staffing Group was heard on April 8, 2015, by telephone conference. The applicant, Victor Colon, did not participate. Tiffany Dropps, benefit administrator, and Renee Burns, on-site staffing coordinator, participated for the employer.

Employer Solutions Staffing Group is a staffing service employer. Colon started a temporary assignment at Branding Iron in Sauk Rapids, MN, on December 9, 2014. He worked full time as a packager.

On December 11, 2014, Colon left early with notice to care for a sick child.

On January 5, 2015, Colon was a no call, no show.

On January 8, 2015, Colon was absent with notice because he was sick.



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On January 12, 2015, Colon left early with notice to care for a sick child. Burns verbally warned him that his attendance was becoming a problem.

On January 19, 2015, Colon left early with notice again to care for a sick child. Burns told Colon that he was being taken off the schedule for poor attendance. Colon remained in contact with Employer Solutions Staffing Group and available for another assignment.

On February 2, 2015, Burns offered Colon an on-call position with Branding Iron, but told him that if he was absent from a shift he accepted, he would not be allowed to continue. Colon accepted and worked shifts on February 3, 4, 6, and 7, 2015.

On February 10, 2015, Colon was absent from a shift that he accepted. He was absent with notice because he was sick. Burns called him to say he could no longer work for Employer Solutions.

On February 10, 2015, Colon was discharged again for poor attendance.

Colon established an unemployment insurance benefit account effective March 8, 2015.

REASONS FOR DECISION

Minnesota Statutes, section 268.095, subdivision 5(c), states that the end of a job assignment with the client of a staffing service is considered a discharge from employment with the staffing service unless section 268.095, subdivision 2(d), applies.

Minnesota Statutes, section 268.095, subdivision 2(d), states that an applicant who, within five calendar days after completion of a suitable temporary job assignment from a staffing service employer, fails without good cause to affirmatively request an additional job assignment, refuses without good cause an additional suitable job assignment, or accepts employment with the client of the staffing service, is considered to have quit employment with the staffing service.

Minnesota Statutes, section 268.095, subdivision 2(d), only applies if an applicant completes the temporary assignment. On February 10, 2015, Colon's assignment was ended because of his conduct. Continuing work was available, but Employer Solutions ended his assignment. Therefore, the staffing service provision of Minnesota Statutes, section 268.095, subdivision 2(d), does not apply. The end of Colon's job assignment with Branding Iron is considered a discharge from employment with Employer Solutions Staffing Group.



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An applicant who has been discharged from employment by an employer is ineligible for unemployment benefits only if he was discharged because of employment misconduct or aggravated employment misconduct, under Minnesota Statutes, section 268.095, subdivision 4.

Employment misconduct is any intentional, negligent, or indifferent conduct, on or off the job, that displays clearly a serious violation of the standards of behavior the employer has a right to reasonably expect of the employee or a substantial lack of concern for the employment, according to Minnesota Statutes, section 268.095, subdivision 6(a).

Absence because of illness or injury of the applicant, with proper notice to the employer, and absence, with proper notice to the employer, in order to provide necessary care because of the illness, injury, or disability of an immediate family member of the applicant, is not employment misconduct, according to Minnesota Statutes, section 268.095, subdivision 6(b).

Colon was discharged twice for poor attendance. Except for one no call, no show, all of his absences were with notice due to his own or immediate family members' illness or injury. There is no record of the reason for Colon's no call, no show. Colon notified the employer of all of his other absences. There is no pattern of disregard for the employment. Colon might have violated the employer's attendance policy, but his conduct did not display clearly a serious violation of the standards of behavior the employer has a right to reasonably expect of the employee or a substantial lack of concern for the employment.

Accordingly, Colon was discharged for reasons other than employment misconduct. If all other requirements are met, he is eligible for unemployment benefits after this separation.

DECISION

On February 10, 2015, Colon was discharged by Employer Solutions Staffing Group for reasons other than employment misconduct. If all other requirements are met, Colon is eligible for unemployment benefits. Under Minnesota Statutes, section 268.047, any unemployment benefits paid to Colon will be used in computing the future unemployment tax rate of Employer Solutions Staffing Group.

Dated: Friday, April 10, 2015

Jessica Mount

Unemployment Law Judge

Login to your account at www.uimn.org/uimn/ to check the status of the other issue(s).



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If you have any questions about this decision, you may contact the the Unemployment Insurance Program. You must have your Issue Identification Number available when you call.

REQUEST FOR RECONSIDERATION

If you believe this decision is factually or legally incorrect, you may request the unemployment law judge to reconsider the decision. You may do this by logging in to your account at www.uimn.org/uimn/, by fax, or by mail (fax number and address are listed at the bottom of this page). A request for reconsideration must include the issue identification number.

Under Minnesota Statute 268.105, subdivision 2, this decision will be final unless a request for reconsideration is filed with the unemployment law judge on or before Thursday, April 30, 2015.

All reconsideration requests filed by an agent on behalf of an employer must be filed online. Use of another method of filing by an agent does not constitute an appeal. If the agent does not have access to file the appeal online, the agent must instruct the employer to file the appeal. Details of this requirement can be found at www.uimn.org/uimn/.