

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIELA GARCIA
Claimant

APPEAL NO. 08A-UI-09703-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**R J PERSONNEL INC
TEMP ASSOCIATES**
Employer

**OC: 09/21/08 R: 04
Claimant: Respondent (1)**

Iowa Code § 96.5(1)j – Voluntary Leaving – Temporary Employment
Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 20, 2008, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on November 5, 2008. Claimant participated. Employer participated through Holly Jacobi.

ISSUE:

The issue is whether claimant was discharged from the temporary assignment for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits, if she quit the employment without good cause attributable to the employer and if she is able to and available for work.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant worked from July 3, 2006 through June 9, 2008 at Musco Lighting and quit because her husband switched jobs and she did not have child care while she was working second shift and first shift work was not available. Employer placed her at Pretium Packaging from June 10 through July 21, 2008 when she quit because she did not like the job because they did not have enough work to keep her busy full-time and frequently sent her home early. She promptly contacted the employer for another assignment and after about nine days she began an assignment at Micro-Surface on July 30 and worked through August 20 when she left to start work at HON on or about August 21. She worked there until September 19, 2008 when she was released due to performance issues not related to misconduct.

REASONING AND CONCLUSIONS OF LAW:

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

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.

Since employer has not established misconduct with respect to the most recent assignment separation benefits are allowed on that basis. The next question is whether claimant's separation from the temporary agency employer is disqualifying.

Iowa Code § 96.5-1-j 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:

j. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

For the purposes of this paragraph:

(1) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(2) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

871 IAC 24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code § 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code § 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The switches between the earlier assignments when there was no claim on file are considered consensual between the parties and do not affect this claim. The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of the temporary assignment. In this case, the employer had notice of the claimant's availability because they notified her of the end of the assignment. Since there were no additional assignments available, benefits are allowed.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially

unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Claimant is able to and available for work during this claim. Although she may not have been considered so during the nine day lapse between assignments, that time frame was prior to the effective date of this claim over which the administrative law judge has no jurisdiction.

DECISION:

The October 20, 2008, reference 01, decision is affirmed. The claimant's separation from the assignment was not disqualifying and because the claimant had adequate contact with the employer about her availability as required by statute, the separation from the employment was attributable to the employer. She is able to and available for work effective September 21, 2008. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs