

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE BYLES
Claimant

APPEAL NO: 07A-UI-02920-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

R J PERSONNEL INC
Employer

**OC: 02-25-07 R: 04
Claimant: Respondent (1)**

Section 96.5-2-1 – Discharge/Misconduct
Section 96.5(1)j – Voluntary Leaving (Temporary Employment)

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 19, 2007, reference 01, 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 April 24, 2007. The claimant participated in the hearing. Mike Thomas, Account Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct and whether the claimant sought reassignment from the employer.

FINDINGS OF FACT:

The claimant was employed as a full-time laborer for Temp Associates last assigned at CDS from September 19, 2006 to December 15, 2006. The assignment ended because of the claimant's attendance but the employer did not have any dates of absences or warnings. The claimant pinched a nerve in her right heel and had a doctor's excuse stating she could not stand or walk. She tried to work and the client attempted to find tasks that did not require standing or walking but was only able to find a training position for one shift. At the time the employer notified the claimant that the assignment had ended, they also advised the claimant that they had no additional assignments available. CDS notified the employer the assignment ended February 15, 2007, when it sent an e-mail detailing the specifics of the termination (Employer's Exhibit One). The employer's policy requires employees to notify it within three days of the completion of an assignment. The claimant did not call because she worked third shift and by the time she woke up there was a message from the employer telling her that her assignment was over. On December 18, 2006, the employer called and left her a message about another possible assignment. The claimant returned the call and refused a job paying \$7.50 per hour after the claimant was making \$9.90 an hour at CDS. The claimant testified she called in several times inquiring about other assignments but the employer told her she was "on the list" and did not call to offer her any positions after December 18, 2006. The employer does not show any contacts by the claimant after December 18, 2006 (Employer's Exhibit Two).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from her assignment for no disqualifying reason and did contact the employer for further assignments.

Iowa Code section 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 section 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 section 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 claimant's assignment ended following a pinched nerve in her heel for which she had a doctor's excuse. Excessive absences are not considered misconduct unless unexcused. Absences due to properly reported illness cannot constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). Consequently, the claimant's separation from employment was not a disqualifying event.

With regard to the claimant seeking reassignment from the employer, 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 CDS notified the claimant and the employer of the end of the assignment and the employer called the claimant about a new assignment within three days of the completion of the assignment. While it does seem unlikely that the claimant called in several times but the contacts were not listed on the employer's contact list, her testimony that she did call was equally as credible as the employer's testimony that she did not call. Therefore, benefits are allowed.

DECISION:

The March 19, 2007, reference 01, decision is affirmed. The claimant's separation from employment was attributable to the employer. The claimant had adequate contact with the employer about her availability as required by statute. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs