

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MERLIN SANDS

Claimant

APPEAL NO: 15A-UI-05455-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 08/03/14

Claimant: Respondent (1)

Section 96.5(1)j – Voluntary Leaving (Temporary Employment)

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 6, 2015, 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 June 12, 2015. The claimant participated in the hearing with Attorney Alissa Herbold. Michael Payne, Risk 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 material handler/general laborer for Advance Services last assigned at Pioneer in Aurelia, Iowa, from September 3, 2014 to April 15, 2015. He completed the assignment when he was laid off due to a lack of work.

The employer notified the claimant of the impending layoff April 13, 2015. Jenna McClaren, onsite Human Resources Coordinator, went in to the break room after the 2:00 p.m. shift meeting and told the claimant his assignment was ending April 15, 2015. The claimant then went into Ms. McClaren's office shortly after that conversation and asked her what he was "going to do now?" She indicated she had several jobs in Spirit Lake, which is approximately 80 miles from the claimant's Holstein, Iowa, home, and he said that was a long drive. Ms. McClaren then told him to go ahead and apply for unemployment benefits as there was no other suitable work in the area for the claimant.

The employer's policy states that employees must check in with the employer within three days after the completion of the assignment (Employer's Exhibits One and Two). The claimant does not recall receiving a copy of that policy at the time of hire. He stated he requested copies of everything he signed within one month of being hired but never received them.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment with good cause attributable to the employer.

Iowa Code section 96.5(1) 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.

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.

Iowa Admin. Code r. 871-24.32(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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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.

The employer has not established misconduct on the part of the claimant or that the claimant voluntarily quit his job for good cause attributable to the employer as defined by Iowa law. The claimant completed his assignment when it ended due to a lack of work.

The remaining issue is whether the claimant sought reassignment from the employer. While the employer's policy requires employees to seek reassignment from the employer within three days after the end of the assignment, the purpose of the statute is to provide notice to the temporary employment firm that the claimant is able and available for work. In this case, the claimant sought reassignment by asking the employer about additional assignments the day he learned he was going to be laid off, two days before the actual layoff occurred. That conversation satisfied the reason for the rule because the employer knew at that time the claimant was able and available and wanted another assignment. When the claimant asked Ms. McClaren about further work, she indicated she did not have any closer than Spirit Lake, which is 80 miles from the claimant's home, and directed him to apply for unemployment benefits. Additionally, while the claimant signed the employer's policies about seeking reassignment, he did not receive copies of those policies either at the time of hire or when he asked for them within the first month of his hire. Under these circumstances, the administrative law judge concludes the claimant was laid off due to a lack of work and did seek reassignment from the employer. Therefore, benefits are allowed.

DECISION:

The May 6, 2015, reference 01, decision is affirmed. The claimant's separation from employment was attributable to the employer and the claimant sought reassignment from the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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