

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NASHAWN A JALLAH
Claimant

IOWA STAFFING INC
Employer

**APPEAL 20A-UI-00983-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/05/20
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2) – Discharge for Misconduct
Iowa Code § 96.5(1)j – VQ – Temporary Employment Firm
Iowa Admin. Code r. 871-24.26(15) – VQ – Employee of Temporary Employment Firm

STATEMENT OF THE CASE:

Claimant filed an appeal from the January 31, 2020 (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 19, 2020, at 3:00 p.m. Claimant participated. Employer participated through Alejandra Rocha, Office Manager. Employer's Exhibits 1 – 8 were admitted. Official notice was taken of the administrative record.

ISSUE:

Whether claimant's separation was a voluntary quit without good cause attributable to employer or a discharge for disqualifying job-related misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began his employment with Iowa Staffing, Inc., a temporary employment firm, on March 20, 2019. Claimant had two assignments during his employment. Claimant's first assignment was as a full-time order picker at the Alcoholic Beverage Division of Iowa (which later became Ruan). Claimant began this assignment on March 20, 2019. On January 3, 2020, employer informed claimant that his assignment had ended. During the January 3, 2020 conversation, claimant requested a new assignment from employer. On January 13, 2020, claimant began an assignment as a full-time warehouse worker at Windsor Windows and Doors. Claimant worked January 13 – 17, 2020. Claimant was absent from work on January 20, 2020 due to illness and notified employer prior to the beginning of his shift. On January 21, 2020, employer notified claimant that his assignment was terminated due to attendance. On January 21, 2020, claimant requested a new assignment from employer. On January 27, 2020, employer terminated claimant. However, claimant is eligible for rehire and assignment with employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant's separation from employment is not disqualifying. Benefits are allowed provided claimant is otherwise eligible.

Iowa Code section 96.5(1)(j) provides:

An individual shall be disqualified for benefits

1. 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. (1) 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.

(2) 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.

Iowa Admin. Code r. 871-24.26(15) 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:

Employee of temporary employment firm.

a. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm within three days of completion of an employment assignment and seeks reassignment under the contract of hire. The employee must be advised by the employer of the notification requirement in writing and receive a copy.

b. The individual shall be eligible for benefits under this subrule if the individual had good cause for not contacting the employer within three days and did notify the employer at the first reasonable opportunity.

c. Good cause is a substantial and justifiable reason, excuse or cause such that a reasonable and prudent person, who desired to remain in the ranks of the employed, would find to be adequate justification for not notifying the employer. Good cause would include the employer's going out of business; blinding snow storm; telephone lines down; employer closed for vacation; hospitalization of the claimant; and other substantial reasons.

d. Notification may be accomplished by going to the employer's place of business, telephoning the employer, faxing the employer or any other currently accepted means of communications. Working days means the normal days in which the employer is open for business.

Claimant requested new assignments from employer on the day each of his two assignments ended. Claimant did not voluntarily quit without good cause attributable to employer.

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 disqualification shall continue 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Iowa Admin. Code r. 871-24.32(7) provides:

(7) *Excessive unexcused absenteeism*. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Excessive absences are not considered misconduct unless unexcused. The requirements for a finding of misconduct based on absences are therefore twofold. First, the absences must be excessive. *Sallis v. Emp't Appeal Bd.*, 437 N.W.2d 895 (Iowa 1989). The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. *Higgins v. Iowa Dep't of Job Serv.*, 350 N.W.2d 187, 192 (Iowa 1984). Second, the absences must be unexcused. *Cosper*, 321 N.W.2d at 10. The requirement of "unexcused" can be satisfied in two ways. An absence can be unexcused either because it was not for

“reasonable grounds,” *Higgins*, 350 N.W.2d at 191, or because it was not “properly reported,” holding excused absences are those “with appropriate notice.” *Cosper*, 321 N.W.2d at 10.

Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, 321 N.W.2d at 9; *Gaborit v. Emp’t Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007).

Claimant’s absence on January 20, 2020 was for reasonable grounds and was properly reported. Therefore, the absence was excused and is not misconduct. Without a current or final act of misconduct, the history of other incidents need not be examined. Employer has not met its burden of proving disqualifying, job-related misconduct. Claimant was discharged for no disqualifying reason.

Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The January 31, 2020 (reference 03) unemployment insurance decision is reversed. Claimant’s separation is not disqualifying. Benefits are allowed provided claimant is otherwise eligible.

Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

acw/scn