

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

<b>JACQUELINE FLOYD</b> Claimant  <b>QPS EMPLOYMENT GROUP INC</b> Employer	<div>68-0157 (9-06) - 3091078 - EI</div> <div><b>APPEAL NO: 17A-UI-12208-JE-T</b>  <b>ADMINISTRATIVE LAW JUDGE DECISION</b></div> <div><b>OC: 09/17/17</b> <b>Claimant: Appellant (2)</b></div>
--	---

Section 96.5-2-a – Discharge/Misconduct  
Section 96.5(1)j – Voluntary Leaving (Temporary Employment)  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 16, 2017, reference 04, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 22, 2017. The claimant participated in the hearing. The employer provided the names and numbers of two witnesses but neither was available when called for the hearing and did not respond to the voice mail left by the administrative law judge. Department's Exhibit D-1 was admitted into evidence.

**ISSUES:**

The issues are whether the claimant's appeal is timely, whether the employer discharged the claimant for work-connected misconduct and whether the claimant sought reassignment from the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last known address of record on October 16, 2017. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by October 26, 2017. The appeal was not filed until November 28, 2017, which is after the date noticed on the disqualification decision. The claimant did not understand that her employment with this employer would have any bearing on her unemployment because she only worked there for two days. Consequently, she did not appeal the decision until she learned her belief that this job had no impact on her unemployment was incorrect and filed her appeal immediately. Under these circumstances the administrative law judge finds the claimant's appeal is timely.

The claimant was employed as a full-time CNC operator for QPS Employment Group last assigned at MTE from August 31 to September 1, 2017. She notified the employer that due to the fact her ride fell through September 1, 2017, she may be a little late for work. The employer called her back and notified her that the client ended her assignment. The claimant asked if the employer had further work that day and called back two days later to ask about further work but the employer still did not have an additional work at that time.

## REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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:

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, regardless of the source of the individual's wage credits:

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. (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.

(3) For the purposes of this paragraph:

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

(b) "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 as defined by Iowa law. The remaining issue is whether the claimant sought reassignment from the employer. 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 she learned her assignment ended and two days later. Those contacts satisfied the reason for the rule because the employer knew at that time the claimant was able and available and wanted another assignment.

#### **DECISION:**

The October 16, 2017, reference 04, decision is reversed. The claimant's appeal is timely. The claimant's separation from employment was attributable to the employer. Benefits are allowed provided the claimant is otherwise eligible.

---

Julie Elder  
Administrative Law Judge

---

Decision Dated and Mailed

je/rvs