

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MAHALIA MCCULLUM
Claimant

APPEAL NO: 16A-UI-06590-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 04/24/16
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 9, 2016, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 29, 2016. The claimant participated in the hearing. Colleen McGuinty, Unemployment Benefits Coordinator; Julie Thill, Account Manager; and Sara Vlach, Front Desk Specialist/Account Administration; participated in the hearing on behalf of the employer.

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 general laborer for L A Leasing last assigned at Nordstrom Distribution Center on May 6, 2016. All of the claimant's assignments since she was hired by the employer August 31, 2015, have been with Nordstrom's. She works for a period of time and is then laid off. She was on a layoff from April 15 until May 6, 2016, at which time she worked one day before being laid off again. She returned to work at Nordstrom's May 31, 2016. The claimant was laid off due to a lack of work.

The employer's records show the claimant did not contact it within three working days of the completion of her assignment May 6, 2016. The claimant testified she contacted the employer every business day until May 13, 2016. She indicated she spoke with Front Desk Specialist/Account Administration Sara Vlach and was repeatedly told the employer did not have any work for her at that time. She also inquired as to when Nordstrom's would be calling employees back to work but Ms. Vlach did not know and could not provide that information. After May 13, 2016, the claimant stated she started calling Nordstrom's directly but only received a recording that said currently there were no employees working at Nordstrom's Distribution Center at that time and directed employees to contact the employer. Ms. Vlach does not recall speaking to the claimant between May 6 and May 25, 2016, the first date the employer documented that the claimant called on its system.

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 § 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 § 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 as defined by Iowa law. She was temporarily laid off 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 working 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 credibly testified she called and spoke to Ms. Vlach every day until May 13, 2016, at which time she began trying to contact the employer's on-site coordinators at Nordstrom's location but only reached a recorded message stating no employees were working there at that time. Under these circumstances, the administrative law judge must conclude the claimant did contact the employer within three working days of the completion of her assignment and has thus satisfied the employer's requirement of seeking further assignments. Therefore, benefits must be allowed.

DECISION:

The June 9, 2016, reference 02, decision is reversed. 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/pjs