

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LORI S KETCHUM

Claimant

LABOR READY MIDWEST INC

Employer

APPEAL NO. 14A-UI-07794-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/22/14

Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1-j – Temporary Employment Firm Employees

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 23, 2014, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 20, 2014. Claimant participated personally. Employer did not participate.

ISSUES:

Whether claimant was discharged for misconduct.

Whether claimant made a timely request for another job assignment.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant alone participated in the hearing with the administrative law judge, and as such all findings of fact are based on the testimony of claimant. Claimant last worked for employer on June 18, 2014. Employer discharged claimant on June 23, 2014 because it believed claimant had not called into the office within three days of the ending of her previous placement.

Claimant stated that the ending of the previous employment was as a result of a dispute between employer and the third party with whom claimant was placed. Claimant stated that she did call in every day after her placement ended, and was told that since she had been fired, employer would not place her again.

REASONING AND CONCLUSIONS OF LAW:

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 Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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 gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning contact after a placement has ended. Claimant acted in accordance with this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because the claimant acted as she was supposed to act. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

The administrative law judge additionally holds that claimant contacted the temporary work employer within three days of the expiration of her last assignment actively seeking additional job placement.

DECISION:

The decision of the representative dated July 23, 2014, reference 02, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs