

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEANNA L ROELFS
Claimant

APPEAL NO. 13A-UI-03617-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TUCKER STAFFING LLC
Employer

OC: 03/03/13
Claimant: Respondent (2-R)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The employer, Tucker Staffing, filed an appeal from a decision dated March 22, 2013, reference 01. The decision allowed benefits to the claimant, Deanna Roelfs. After due notice was issued, a hearing was held by telephone conference call on May 1, 2013. The claimant participated on her own behalf. The employer participated by Owner Jason Bailey, General Sales Manager Fran Ratchford and Delbert Morgan.

ISSUE:

The issue is whether the claimant was discharged for misconduct sufficient to warrant a denial of unemployment benefits.

FINDINGS OF FACT:

Deanna Roelfs was employed by Tucker Staffing from May 21, 2012 until March 1, 2013 as a full-time office manager. In August 2012, Owner Jason Bailey had contacted a new client to find out why no work requests had been scheduled. The client informed the owner that he had contacted the office several times but the office manager had told him the work could not be scheduled with such short notice, and the customer had gone back to his previous service provider.

Mr. Bailey was not certain Ms. Roelfs was the one responsible but he did say this was not why he was in business and if he ever found out she had refused to schedule a job, she would be fired. He further instructed her that if she ever had any questions about whether a job could be scheduled, then the caller should be referred to him.

In early 2013 a similar incident occurred. In addition, three employees and four customers had said the office manager had told them their job requests could not be scheduled at such short notice. Mr. Bailey then decided to investigate on his own to verify. He had his step-mother call the office to request a cleaning job and Mr. Roelfs said it could not be done because it was too short a notice. She did not refer the matter to Mr. Bailey, or even leave him a voice mail message on his phone.

The next day Ms. Bailey was confronted with the incident which she admitted and was then discharged.

Deanna Roelfs has received unemployment benefits since filing a claim with an effective date of March 3, 2013.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 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.

The claimant had been advised her job was in jeopardy if there was another verified incident of her refusing a job. The claimant continued to decline jobs without first consulting with the owner and Mr. Bailey was finally able to confirm this as of February 28, 2013. The employer was not business to lose jobs and clients but that was the final result of the claimant's conduct. This is a violation of the duties and responsibilities the employer has the right to expect of an employee and conduct not in the best interests of the employer. The claimant is disqualified.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The claimant has received unemployment benefits to which she is not entitled. The question of whether the claimant must repay these benefits is remanded to the UIS division.

DECISION:

The representative's decision of March 22, 2013, reference 01, is reversed. Deanna Roelfs is disqualified and benefits are withheld until she has earned ten times her weekly benefit amount in insured work, provided she is otherwise eligible. The issue of whether the claimant must repay the unemployment benefits is remanded to UIS division for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css