

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NOBLE J MURREN
Claimant

APPEAL NO: 19R-UI-01466-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELITE STAFFING GLOBAL INC
Employer

OC: 06/24/18
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 8, 2019, reference 07, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 5, 2019. The claimant did not respond to the hearing notice and did not participate in the hearing. Heather Scarbury, Staffing Coordinator and Joseph McDonnell, Employer Representative, 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 assembly/paint line employee for Elite Staffing Global last assigned at Dalton Ag from October 30, 2018 to December 7, 2018. His assignment ended due to attendance.

On December 6 and December 7, 2018, the claimant was absent and notified the client company but did not call the employer and consequently the employer considered him to be a no-call/no-show those two days and his assignment was ended.

The claimant received a verbal warning November 6, 2018, for being tardy November 2 and November 6, 2018. He was absent due to illness November 15, 2018. He received a verbal warning November 26, 2018, after he reported he would not be in due to road conditions. The employer asked the claimant to report to work later and when he refused the employer issued the verbal warning. On December 4, 2018, the claimant left three hours early without notifying the employer.

On December 10, 2018, the claimant called the employer about another assignment per the employer's policy requiring employees to contact it within three days after the end of an assignment. The employer offered the claimant a position at Michael Foods in Lenox, Iowa, and

the claimant accepted the job but called back a short time later to state he could not take the assignment because he had to attend a mandatory class every Tuesday evening.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his 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. While the claimant did not ever contact the employer about his absences, he did notify the client every time he was absent with the exception of the incidents of tardiness when he overslept. That indicates that the claimant was not necessarily aware of the employer's policy requiring employees to report absences to it as well as the client.

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 claimant's assignment ended December 7, 2018, and the claimant contacted the employer December 10, 2018, which was within the three day period. Consequently the claimant sought reassignment from the employer in a timely manner. Therefore, because the employer has not demonstrated misconduct on the part of the claimant and he did seek reassignment, the administrative law judge must conclude the employer has not met its burden of proof. Benefits are allowed.

DECISION:

The January 8, 2019, reference 07, decision is affirmed. 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/scn