

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

MELANIE A KNUTH  
602 E 5<sup>TH</sup> ST APT F  
SOLON IA 52333

WESTSTAFF USA INC  
c/o EMPLOYMENT TAX CONSULTING  
440 W COLORADO ST #204  
GLENDALE CA 91204

Appeal Number: 04A-UI-03223-DT  
OC: 07/20/03 R: 03  
Claimant: Appellant (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5-1-j – Temporary Employment  
871 IAC 24.26(19) – Temporary Employment  
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Melanie A. Knuth (claimant) appealed a representative's March 19, 2004 decision (reference 07) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment from Weststaff USA, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 14, 2004. The claimant participated in the hearing. Jennifer Meyer appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE: Was there a disqualifying separation from employment?

#### FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant began taking assignments with the employer on October 10, 2002. Her final assignment worked began on November 17, 2003. Her last day on the assignment was December 3, 2003. On December 2, the employer informed the claimant that her assignment would be ending because the claimant had failed to pass a background check as required by the business client due to a simple misdemeanor that showed up on her record. Because the simple misdemeanor would have dropped off the record check in January 2004, the employer and claimant discussed the possibility of whether the client would waive the background check. The claimant had further discussions with the representative's of the business client on December 3 and was informed that they could not waive the report, and that while the claimant could work two more days, the client would end the assignment at that time because of the report. The claimant decided that she needed longer-term work, and declined the option to work the additional two days, and so left the client after only working part of the day on December 3. The same day, after leaving the client, the claimant contacted the employer and explained the situation, and asked for a new assignment. The employer directed the claimant to report to a new assignment on December 4. However, when the claimant reported to that client on December 4, there were already enough temporary workers, so that there was no work available at that client for the claimant. The claimant reported this to the employer and asked for additional work; however, no additional work assignments were immediately available.

#### REASONING AND CONCLUSIONS OF LAW:

The essential question in this case is whether there was a disqualifying separation from employment. The first subissue in this case is whether the employer or the business client was going to end the claimant's assignment effective December 4 and in effect discharged her from the assignment for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer or client was right or even had any other choice but to terminate the claimant's assignment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate decisions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code Section 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

The focus of the definition of misconduct is on acts or omissions by a claimant that "rise to the level of being deliberate, intentional or culpable." Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer's interest, such as found in:
  - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
  - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
  - a. Manifest equal culpability, wrongful intent or evil design; or

- b. Show an intentional and substantial disregard of:
  - 1. The employer's interest, or
  - 2. The employee's duties and obligations to the employer.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

The reason the employer was forced to terminate the claimant from her assignment was solely the simple misdemeanor on her criminal history. The employer has failed to meet its burden to establish misconduct. Cosper, supra. The separation from the assignment that would have been become effective December 4, 2003 does not preclude the claimant from receiving benefits, if she is otherwise eligible.

The second subissue in this case is whether the claimant voluntarily quit.

871 IAC 24.25(40) provides:

(40) Where the claimant voluntarily quit in advance of the announced scheduled layoff, the disqualification period will be from the last day worked to the date of the scheduled layoff. Benefits shall not be denied from the effective date of the scheduled layoff.

871 IAC 24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

Here the claimant had been advised that she could only work two more days on the assignment. Rather than completing the two days, in anticipation of the ending of the assignment the claimant opted to leave on December 3. If she had filed an additional claim for benefits for that week because of her failure to work the remaining two days on the assignment, she would not have been eligible for that week; however, Agency records indicate she filed no claim for that week. The claimant's early departure from the assignment does not disqualify her from benefits effective December 7, 2003.

#### DECISION:

The representative's March 19, 2004 decision (reference 07) is reversed. The employer did end the claimant's assignment but not for disqualifying reasons. She did voluntarily leave the assignment two days early due to the announced ending of the assignment, but that leaving does not disqualify the claimant after that week. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

ld/kjf