

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**JENNIFER FINGER**

Claimant

**REMEDY INTELLIGENT STAFFING INC**

Employer

**APPEAL NO. 18A-UI-10983-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/30/18**

**Claimant: Appellant (2)**

Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated October 29, 2018, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 26, 2018. Claimant participated and had representative Devin Kelly. Employer participated by Kayla Jones.

**ISSUE:**

The issue in this matter is whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on October 3, 2018. Claimant ended her assignment on October 3, 2018, as she felt harassed by her supervisor at her placement at Fair Play. Claimant stated that she contacted her employer by email on the date of the ending of the assignment and called employer the next day and asked for a new placement. Employer's documentation indicated that claimant didn't call or email until three days after the ending of the assignment. Employer told claimant when they spoke on October 8, 2018 that claimant had been terminated for not giving two days' notice in advance of her quit. Claimant stated that employer just told her she couldn't have another assignment when she asked for one.

Claimant repeatedly requested that she be transferred to a different job in July and August, 2018. Employer stated that they don't normally have clerical openings as they are focused on manufacturing jobs, and speculated that claimant's request wasn't able to be filled as they didn't have an additional receptionist job. Claimant did not mention that she was being harassed when she requested to change jobs.

Employer stated that at the time of hire that claimant was given documentation requiring claimant to be in contact with employer two days before quitting any position. Employer stated that said documentation did not allow for any emergency conditions, but that employer would have allowed for emergencies such as the claimant stated, if only she would have shared the information. Employer also stated that claimant was given information that she needed to be in contact with employer within three days of the ending of an assignment. Claimant stated that

she had no memory of specifically signing for a document that stated she was to be in contact within three days of the ending of an assignment. Claimant further stated she had no memory of ever being told or receiving a document indicating that she could not end an assignment without giving two days' advanced notice.

### **REASONING AND CONCLUSIONS OF LAW:**

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

(4) Report required. The claimant's statement and 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.

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 § 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. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra.

In this matter, employer stated that they had documents, and had given claimant documents which informed claimant that she needed to be in touch with employer two days before quitting any assignment and needed to be in touch with employer within three days of the end of any assignment. None of these documents were provided to the administrative law judge in advance of the hearing as rules demand. If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). Here, employer did not provide information necessary to prove up their case.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning proper procedures to be followed in leaving an assignment. Claimant was not warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because employer did not prove that claimant had received the rules on quitting as a part of her employment. 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.

#### **DECISION:**

The October 29, 2018, (reference 02) decision is reversed. Benefits are allowed, provided the claimant is otherwise eligible.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

bab/scn