

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SARAH J BREESE**  
Claimant

**APPEAL NO. 13A-UI-06167-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SUPREME STAFFING INC**  
Employer

**OC: 02/07/10  
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

**STATEMENT OF THE CASE:**

Supreme Staffing, Inc. filed a timely appeal from a representative's decision dated May 20, 2013, reference 04, which held claimant eligible to receive unemployment insurance benefits. After due notice a telephone hearing was held on July 1, 2013. Ms. Breese participated. Although the employer supplied a telephone number for their witness, the employer's witness was not available at the telephone number provided. Messages were left for the witness.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Sarah Breese began employment with Supreme Staffing, Inc. in May 2011. Ms. Breese was most recently assigned to work as a customer sales representative for the Intraco Company on February 13, 2013. Ms. Breese was paid by the hour. Her contact people at Supreme Staffing, Inc. were Ms. Rebecca Garcia and Mr. Mike Riehl.

Ms. Breese was discharged on or about April 30, 2013, because the client company would not allow the claimant to continue at the assignment because her attendance violations had exceeded the permissible number allowed under Intraco company policy.

The client employer has a "no fault" policy which assesses attendance infraction points no matter what the reason for the absence or tardiness. The claimant received a warning from the client employer in March 2013.

The claimant was discharged after she had been unable to report for work on April 29 and 30 due to the sudden, unexpected illness of herself and her daughter. Ms. Breese properly reported to the client employer that she would not be reporting to work on those days but nevertheless was discharged from her work. After being informed of her discharge by Mr. Riehl,

Ms. Breese went to Supreme Staffing, Inc.'s facilities within three working days to look for additional assignments. Claimant was told at that time that there were no additional assignments and that the claimant should take the time to improve her health and the health of her child.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant left employment with good cause attributable 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.

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

Iowa Code section 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.

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.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of the temporary assignment. The evidence in the record establishes the claimant was discharged by the employer because the client company had requested that Ms. Breese be removed from the assignment because she had been excessively absent. The evidence in the record establishes that the claimant's last absences were due to illness and were properly reported. As the claimant's last absences were due to illness and were properly reported, the claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's decision dated May 20, 2013, reference 04, is affirmed as modified. The portion of the determination allowing benefits without disqualification is affirmed. The portion of the determination finding the claimant had completed a temporary assignment is modified to find that the claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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