

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**ERIC J MASON**  
Claimant

**TEAM STAFFING SOLUTIONS INC**  
Employer

**APPEAL 14A-UI-11763-LT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/05/14**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the November 5, 2014, (reference 01) unemployment insurance decision that denied benefits based upon a discharge from employment. The parties were properly notified about the hearing. A telephone hearing was held on December 4, 2014. Claimant participated. Employer participated through human resources generalist, Sarah Fiedler. Employer's Exhibit 1 was received.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?  
Did the claimant quit by not reporting for additional work assignments within three business days of the end of the last assignment?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a production laborer in an ongoing assignment at Seimens from March 13, 2014, and was separated from the assignment but not the employment on August 8, 2014. The separation from the employment was based upon multiple levels of hearsay. Kayla from Team Staffing told claimant by phone his assignment had ended and there was no discussion about other work. On August 11 claimant contacted Eric Bartholomew asking about an appeal of the Seimens decision and requested further work. There was none.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from the assignment for no disqualifying reason.

Iowa Code § 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.

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).

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. IDHS*, 461 N.W.2d 603, 607 (Iowa App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608.

The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). Mindful of the ruling in *Crosser*, and noting that the claimant presented direct, first-hand testimony while the employer relied upon second-hand witnesses, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer, which has not met its burden of proof.

Since the employer has not established misconduct with respect to the separation from the assignment, benefits are allowed on that basis. The next question is whether claimant's separation from the temporary agency employer is disqualifying.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.26(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 and seeking work at the end of the temporary assignment. Since claimant contacted the employer within three working days of the notification of the end of the assignment, requested reassignment, and there was no work available, benefits are allowed, provided he is otherwise eligible.

**DECISION:**

The November 5, 2014, (reference 01) decision is reversed. The claimant's separation from the assignment was not disqualifying and because he had adequate contact with the employer about his availability and requested further work as required by statute, the separation from the employment is also not disqualifying. Benefits are allowed, provided the claimant is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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