

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MATT COUSINS**

Claimant

**APPEAL NO. 10-UI-04269-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEAM STAFFING SOLUTIONS INC**

Employer

**OC: 02/21/10**

**Claimant: Appellant (2-R)**

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

**STATEMENT OF THE CASE:**

Matt Cousins filed a timely appeal from the March 16, 2010, reference 01, decision that denied benefits based on an Agency conclusion that he had failed to contact the employer within three working days of the end of his assignment to request a new assignment. After due notice was issued, a hearing was held on May 3, 2010. Mr. Cousins participated. Sara Fiedler, Claims Administrator, represented the employer.

**ISSUE:**

Whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Matt Cousins commenced his employment relationship with Team Staffing Solutions, Inc. in 2000 and most recently performed work for the employer in a full-time assignment at Grain Processing Corporation (GPC) that started in October 2008. On February 22, 2010, GPC ended the assignment for alleged horseplay and telephone use. GPC did not provide additional details to Team Staffing Solutions. On February 22, Charity Stone, an Account Manager with Team Staffing Solutions, telephoned Mr. Cousins and left a message for him to call her back. On February 23, Mr. Cousins returned Ms. Stone's call. Ms. Stone told Mr. Cousins that GPC had ended the assignment for telephone abuse and horseplay. Mr. Cousins had not engaged in horseplay. Mr. Cousins had used the business phone twice to order pizza. Ms. Stone told Mr. Cousins he needed to turn in his GPC ID badge. Mr. Cousins asked for a new assignment and Ms. Stone indicated she would sign him up as available for a new assignment. Ms. Stone told Mr. Cousins that Team Staffing did not have a new assignment for him at that time. Mr. Cousins asked about unemployment insurance benefits and Ms. Stone referred Mr. Cousins to Workforce Development.

Mr. Cousins next made contact with Team Staffing on March 3, 2010, when he dropped off his GPC ID badge. Mr. Cousins spoke with Account Manager Mary Kirshner. Ms. Kirshner asked Mr. Cousins whether he wanted to update his information and Mr. Cousins said he did not, that

he had another job lined up, and that he was going back to school. Mr. Cousins had not started back to school and did not go to work for a new employer. Mr. Cousins had further contact with the employer on March 12 and reiterated that he was not interested in further assignments through the employer.

In June 2008, the employer had Mr. Cousins sign a Notification Requirement Availability for Work Assignments form that notified Mr. Cousins that he was required to notify the employer within three working days of the end of an assignment to request a new assignment or face consequences to his unemployment insurance eligibility. The policy statement appeared by itself in a separate document and the employer provided Mr. Cousins with a copy.

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

The administrative law judge will first address Mr. Cousins' separation from the assignment at GPC. The weight of the evidence indicates that the client business ended the assignment due to dissatisfaction with Mr. Cousin's conduct in the assignment. In other words, Mr. Cousins was discharged from the assignment.

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.

The employer has the burden of proof in a discharge situation. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious

enough to warrant a denial of unemployment benefits. See Lee v. Employment Appeal Board, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See Gimbel v. Employment Appeal Board, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

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. See 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer has not presented sufficient evidence, or insufficiently direct and satisfactory evidence, to establish that Mr. Cousins was discharged from the assignment for misconduct that would disqualify him for unemployment insurance benefits. In the absence of additional evidence, the evidence fails to establish that Mr. Cousins' use of the client's telephone two times to order food involved misconduct. The evidence regarding the phone use actually came from Mr. Cousins. The employer has submitted no evidence to support either allegation that led to Mr. Cousins' separation from the assignment.

The administrative law judge will next address Mr. Cousins' separation from the temporary employment agency.

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 employer has an end-of-assignment notice policy statement that complies with the requirements of Iowa Code section 96.5(1)(j). The employer further complied with the requirements of the statute by having Mr. Cousins sign the policy and by providing Mr. Cousins with a copy of the policy. Thus, the statute applied to Mr. Cousins' employment. The administrative law judge notes that the employer did not present testimony from Ms. Stone. When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976). The weight of the evidence in the record indicates that Mr. Cousins' assignment ended February 22, that Mr. Cousins was in contact with Team Staffing Solutions on February 23, that he inquired about an assignment at that time, but that Team Staffing Solutions did not have an assignment for him. Mr. Cousins fulfilled his obligation under Iowa Code section 96.5(1)(j). Mr. Cousins' separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Mr. Cousins is eligible for benefits provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Cousins.

The evidence presented at the hearing raises the issue of whether Mr. Cousins refused an offer of suitable employment on March 3, 2010 or March 12, 2010. Refusal of suitable work was not one of the issues set for hearing. This matter will be remanded to the Claims Division so that the work refusal issues concerning March 3 and March 12, 2010 may be adjudicated.

**DECISION:**

The Agency representative's March 16, 2010, reference 01, decision is reversed. The claimant's separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

This matter is remanded to the Claims Division so that the work refusal issues concerning March 3 and March 12, 2010 may be adjudicated.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs