

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAVEN D LANE
Claimant

APPEAL NO: 19A-UI-02041-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AEROTEK INC
Employer

OC: 03/11/18
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct
Section 96.5(1)j – Voluntary Leaving (Temporary Employment)

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 28, 2019, reference 03, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on March 25, 2019. The claimant did not respond to the hearing notice and did not participate in the hearing. Jaimie Lopez, Contractor Care Representative, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct and whether the claimant sought reassignment from the employer.

FINDINGS OF FACT:

The claimant was employed as a full-time call center representative I for Aerotek, last assigned at ADP from July 2, 2018 to January 7, 2019. The client ended the assignment due to attendance.

The attendance policy states that if an employee accumulates seven to eight occurrences she will receive a written warning; if she accumulates eight to nine occurrences she will receive a final written warning; and if she accumulates nine plus occurrences she will be discharged. Any absence not scheduled in advance is considered an unapproved occurrence.

The claimant was absent July 24, 2018; she was one hour tardy July 30, 2018; she was 11 minutes tardy August 28, 2018; she was three hours and 15 minutes tardy August 29, 2018; she was absent September 10, 2018; she was 12 minutes tardy and left one hour and 30 minutes early September 11, 2018; she was absent September 24, 2018; she was seven minutes tardy September 26, 2018; she was 18 minutes tardy October 1, 2018 she was absent October 8, 2018; she left eight hours and 17 minutes early October 10, 2018; she was absent October 15, 2018; she was a no-call/no-show November 12, 2018; she left two hours and 34 minutes early November 20, 2018; she was absent November 30, 2018; she was nine minutes tardy December 5, 2018; she was one hour and eight minutes tardy December 10, 2018; she was 25 minutes tardy and left two hours and 14 minutes early January 3, 2019; and

was a no-call/no-show January 4, 2019. The claimant received a written warning December 3, 2018. She did not receive a final written warning.

The employer did not know the reasons for any of the claimant's absences or when she left early. The claimant stated in the fact-finding interview she was sent home because she could not talk and was diagnosed with pneumonia and the flu and had a doctor's excuse. She did contact the employer's recruiter for an additional assignment January 9, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment with good cause attributable to the employer.

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 Code section 96.5(1)j provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. (1) 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.

(2) 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.

(3) For the purposes of this paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

The employer has not established misconduct on the part of the claimant as defined by Iowa law. The claimant's last absence was due to illness and she had a doctor's excuse for that absence. Although it is unclear whether the claimant reported that absence, even assuming she did not that was an isolated incident. Under Iowa law the claimant is considered to have completed the assignment.

The remaining issue is whether the claimant sought reassignment from the employer. While the employer's policy requires employees to seek reassignment from the employer within three days after the end of the assignment, the purpose of the statute is to provide notice to the temporary employment firm that the claimant is able and available for work. In this case, the claimant sought reassignment by asking the employer about additional assignments January 9, 2019. That conversation satisfied the reason for the rule because the employer knew at that time the claimant was able and available and wanted another assignment.

DECISION:

The February 28, 2019, reference 03, decision is affirmed. The claimant's separation from employment was attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn