

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER HARRIS
Claimant

APPEAL NO: 15A-UI-12694-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC
Employer

OC: 10/04/15
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 November 4, 2015, reference 04, 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 December 7, 2015. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Rhonda Hefter De Santisteban, Human Resources Manager and Lynn Pedersen, Branch Manager, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

ISSUES:

The issues are 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 painter for QPS Employment Group last assigned at Advanced Drainage Systems from August 18, 2015 to August 20, 2015. The claimant completed the assignment. He contacted the employer September 3, 2015, and made himself available at that time and was told he would need to reapply prior to being eligible for another assignment.

After an assignment ends the employer requires employees to contact it within three business days of the completion of the assignment and to reapply and update their information. The employer's policy states employees will receive a new Three Day Reassignment Policy each time he reapplies. The claimant has worked several assignments for the employer and has reapplied multiple times but has not received a new Three Day Assignment Policy since he was hired and signed the policy July 26, 2012 (Employer's Exhibit One).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his 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.

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:

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.

The claimant completed his last assignment at Advanced Drainage Systems August 20, 2015. There is no allegation that he committed any misconduct, as defined by Iowa law, while on that assignment.

The remaining issue is whether the claimant sought reassignment from the employer. The employer's policy requires employees to seek reassignment from the employer within three business 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.

The employer requires employees to reapply following each assignment and the employer is to provide a new copy of its Three Day Reassignment Policy after each assignment when the claimant reapplies for work. In this case, the claimant worked several assignments for the employer but had not received a copy of the reassignment policy since July 26, 2012. Because the employer failed to follow its policy with regard to the Three Day Reassignment Policy, the administrative law judge finds the claimant cannot be disqualified for unemployment benefits because he did not contact the employer until September 3, 2015. Benefits are allowed.

DECISION:

The November 4, 2015, reference 04, 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

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