

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**JEREMY J FOSTER**  
Claimant

**APPEAL NO. 18A-UI-07427-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEMP ASSOCIATES – IOWA INC**  
Employer

**OC: 06/17/18**  
**Claimant: Appellant (2)**

Section 96.5-1-j – Separation from Temporary Employer  
Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Jeremy Foster (claimant) appealed a representative's July 9, 2018, decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits due to his separation from work with Temp Associates - Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 27, 2018. The claimant participated personally. The employer participated by Judy Broyles, Manager. The claimant offered and Exhibit A was received into evidence.

**ISSUE:**

The issue is whether the claimant was separated from employment for any disqualifying reason.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant performed services, off and on, from May 5, 2014, through May 25, 2018. Information about whether the claimant signed a document indicating he was to contact the employer within three working days following the completion of an assignment to request placement in a new assignment was unavailable.

On April 9, 2018, the claimant was assigned to work for Miraco as a full-time laborer. He reported his absences due to medical issues on April 16, 17, May 2, and May 10, 2018. In early May 2018, Miraco issued the claimant a written warning for his attendance. Miraco notified the claimant that further infractions could result in the end of his assignment.

On May 21, 2018, the claimant reported his absence due to medical problems. On May 30, 2018, the claimant reported his absence due to transportation issues. Miraco suspended the claimant on June 4, 5, and 6, 2018. On June 7, 2018, the employer told the claimant his assignment had ended. The claimant asked the employer for another assignment but no other work was available.

The claimant's and the employer's testimony is inconsistent. The dates varied because the parties had problems remembering. The administrative law judge adopted some dates from each party.

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

For the reasons that follow the administrative law judge concludes the claimant is eligible to receive unemployment insurance benefits.

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(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.

The determination of whether unexcused absenteeism is excessive necessarily requires consideration of past acts and warnings. The term "absenteeism" also encompasses conduct that is more accurately referred to as "tardiness." An absence is an extended tardiness, and an incident of tardiness is a limited absence. Absences related to issues of personal responsibility such as transportation, lack of childcare, and oversleeping are not considered excused. *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982).

An employer is entitled to expect its employees to report to work as scheduled or to be notified when and why the employee is unable to report to work. All of the claimant's absences, save the final absence, were due to a medical issue and properly reported. None of those absences are deemed to be misconduct. The final absence for transportation issues cannot rise to the level of misconduct because it is a singular absence. One absence in almost one year for a personal reason does not rise to the level of misconduct. The employer did not meet its burden of proof to show misconduct.

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.

Under the Iowa Code the employer must advise the claimant of the three day notice requirement and give the claimant a copy of that requirement. The notice requirement must be separate from the contract for hire. The employer did not provide sufficient proof that the claimant was given the proper notice requirements and has, therefore, failed to satisfy the requirements of Iowa Code Section 96.5-1-j. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's July 9, 2018, decision (reference 02) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs