

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JOE A LOYD
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TEMP ASSOCIATES
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Appeal Number: 05A-UI-00153-RT
OC: 11-28-04 R: 04
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quitting
Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Joe A. Loyd, filed a timely appeal from an unemployment insurance decision dated December 22, 2004, reference 01, denying unemployment insurance benefits to him. After due notice was issued, a telephone hearing was held on January 21, 2005, with the claimant participating. Deborah A. Eagleman, Branch Manager, participated in the hearing for the employer, Temp Associates. Debra L. Fox, Associate Manager, was available to testify for the employer but not called because her testimony would have been repetitive and unnecessary. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment firm and the claimant has been employed by it since June 10, 2002. The claimant's most recent assignment was a long-term assignment beginning on August 6, 2003 with Phillips Pallets. The claimant did not satisfactorily complete this assignment because he was discharged on November 12, 2004, for poor attendance. The employer, Temp Associates, called the claimant on that day and left a message for the claimant to call the employer. When the claimant got the message he called the employer on that same day and was informed that he was discharged. The claimant was specifically told to call the employer back on November 15, 2004 or come in. The claimant did not. In fact, the claimant did not come in or contact the employer until November 18, 2004 when he came in to pick up his last check. The claimant did not do so sooner because he was upset. However, the claimant had been advised in a separate writing that he needed to notify the employer within three working days of the completion of an assignment and to seek re-assignment. The claimant did not do so.

While assigned to Phillips Pallets, the claimant had a number of absences and tardies. He was tardy on October 5, 2004 and October 11, 2004. The claimant did not call either the employer or Phillips Pallets for these two tardies. The claimant did not know why he was tardy but thought it might have been because of a sick child. The claimant was absent on October 4, 2004 without notifying either the employer or Phillips Pallets. He was absent because his son was ill. For the two tardies and absence, the claimant was given a written warning on October 11, 2004. Previously, the claimant had received a written warning on May 20, 2004 for his attendance. The claimant was absent on April 11, 2004 and did not know why and did not call in either the employer or Phillips Pallets. The claimant was also absent on May 15, 2004 and although he notified the employer he did not call Phillips Pallets. The claimant was then absent on November 11, 2004 and did not notify the employer. The claimant was then sent home early on November 12, 2004 and then discharged. The employer has a policy, of which the claimant was aware, that employees who are going to be absent must notify both the employer and the assignee.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from employment was a disqualifying event. It was.

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.

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, (7) provide:

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 Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

(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 administrative law judge concludes that the employer herein, Temp Associates, is a temporary employment firm. The administrative law judge further concludes that the claimant was advised in writing of the requirement that he notify the temporary employment firm of the completion of an employment assignment and seek re-assignment within three working days of the completion of the assignment. The administrative law judge further concludes that the claimant failed to properly notify the temporary employment firm of the completion of his employment assignment and seek re-assignment within three working days and, therefore, he is deemed to have voluntarily quit because he was advised in writing of the duty to notify the temporary employment firm and seek re-assignment. Accordingly, the administrative law judge concludes that the claimant effectively quit on November 18, 2004 after waiting over three days to seek re-assignment from the temporary employment firm. In fact, the claimant was specifically instructed on November 12, 2004 to call the employer, Temp Associates, a temporary employment firm, on November 15, 2004 or come in, to seek re-assignment. The claimant did not do so. The administrative law judge concludes that his failure to do so was a voluntary quit effective November 18, 2004. The only reason the claimant gave for such failure was that he was upset over his discharge. The claimant was discharged by the assignee, Phillips Pallets, and being upset over this is not good cause for a failure to inform the employer of his separation and to seek re-assignment.

The issue then becomes whether the claimant left his employment without good cause attributable to the employer. The administrative law judge concludes that the claimant has the burden to prove that he has left his employment with the employer herein with good cause attributable to the employer. See Iowa Code section 96.6-2. The administrative law judge concludes that the claimant has failed to meet his burden of proof to demonstrate by a preponderance of the evidence that he left his employment with the employer herein with good cause attributable to the employer. There is not a preponderance of the evidence that the claimant's working conditions either with the employer or Phillips Pallets was unsafe, unlawful, intolerable or detrimental or that he was subjected to a substantial change in his contract of hire. The claimant testified to something about the improper fixing of an electrical device but the administrative law judge is not convinced that this makes the claimant's working conditions unsafe. Accordingly, the administrative law judge concludes that the claimant left his employment voluntarily without good cause attributable to the employer and, as a consequence, he is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless he requalifies for such benefits.

Even should the claimant's separation be characterized as something other than a voluntary quit, the administrative law judge would conclude that the claimant is still disqualified to receive unemployment insurance benefits. In general, each assignment by a temporary employment firm is considered a separate employment. Here, the evidence establishes the claimant was discharged for attendance. Were the claimant's absences and tardies excessive unexcused absenteeism? The administrative law judge is constrained to conclude here that they were. The evidence establishes that the claimant had at least three absences that were not properly reported to the employer, Temp Associates. The employer's witness, Deborah A. Eagleman,

Branch Manager, credibly testified that the employer has a rule of policy that requires an employee contact both the employer and the assignee if that employee is going to be absent or tardy. Even the claimant testified that he was aware of this policy. The claimant conceded that for these three absences he never notified the employer. The claimant testified that he notified the assignee but this is not credible. The administrative law judge notes that the claimant received two specific written warnings for absences as no-call/no-shows indicating that he did not notify either the employer or Phillips Pallets. The evidence also establishes two tardies for which neither the employer nor Phillips Pallets was notified. Finally, there is one additional absence on May 15, 2004, for which the claimant called the employer but not Phillips Pallets. Under the evidence here, the administrative law judge must conclude that all of these absences and tardies were not properly reported. Concerning the reason for the absences and tardies, the claimant had no reason for the absence on April 11, 2004 and the two tardies on October 5 and 11, 2004 although he said that one of the tardies might have been for an ill son. However, the claimant testified that he was absent for the illness of his son. It would seem unlikely that the claimant would both be absent and then tardy for the illness of his son. The claimant also testified that for the absence on May 15, 2004, he was actually off work. If he was actually off work that day, the claimant would not have had to have called the employer but he did so. The administrative law judge must conclude that the claimant was not really off work that day but was absent. The claimant also testified that he was told to go home on November 11, 2004 because a machine was not working. However, the claimant's testimony is not particularly credible because at one point he said he was also told to be off on November 12, 2004 but then later said he went to work and worked that day until he left work early. Accordingly, based upon the evidence here, the administrative law judge would conclude that the claimant's absences and tardies were not for reasonable cause and certainly not properly reported and were excessive unexcused absenteeism and disqualifying misconduct. The administrative law judge also believes that the claimant's actions in being loud and adamant to the owner of the assignee, Phillips Pallets, on November 12, 2004, and accusing the owner of doing something wrong in his repairs is also improper. Even the claimant conceded that he was loud and adamant. The claimant seeks to justify his demeanor by stating that it was his safety at stake but the administrative law judge is not convinced that the claimant must be loud and adamant to the owner of the firm for whom the claimant is working in order to protect the claimant's safety. Accordingly, the administrative law judge would conclude that the claimant's absences and conduct were disqualifying misconduct and he would still be disqualified to receive unemployment insurance benefits even if he was considered not to have voluntarily left his employment.

DECISION:

The representative's decision of December 22, 2004, reference 01, is affirmed. The claimant, Joe A. Loyd, is not entitled to receive unemployment insurance benefits, until or unless he requalifies for such benefits, because he left his employment voluntarily without good cause attributable to the employer.

pjs/b