

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
TAMMY TESAR Claimant REMEDY INTELLIGENT STAFFING INC Employer	APPEAL NO: 15A-UI-06428-JE-T ADMINISTRATIVE LAW JUDGE DECISION OC: 05/17/15 Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 29, 2015, reference 01, 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 July 14, 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. Julie Coughlin, Branch Manager, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

The claimant was employed as a full-time light industrial worker for Remedy Intelligent Staffing last assigned at Frontier from December 1, 2014 to February 12, 2015. The assignment was ended by the client who sent the employer an email stating, "Can we end her assignment? There is a rudeness about her that isn't great for the team." The client did not cite any specific incidents and there is no evidence the claimant received any warnings about her behavior.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code § 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).

While the client sent the employer an email citing the claimant's demeanor, it did not provide the employer with any specific incidents of the claimant acting inappropriately or unprofessionally. Additionally, there is no evidence the claimant ever received any verbal or written warnings regarding her behavior on the assignment. Consequently, the administrative law judge must conclude the employer has not established misconduct on the part of the claimant as that term is defined by Iowa law.

DECISION:

The May 29, 2015, reference 01, 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/mak