

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTINA L JENSEN
Claimant

AVENTURE STAFFING & PROFESSIONAL
Employer

APPEAL 16A-UI-07707-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/19/16
Claimant: Respondent (1R)**

Iowa Code § 96.5(2)a – Discharge/Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from the July 6, 2016, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 2, 2016. Claimant participated. Employer participated through Roxane Minner, Branch Manager and (representative) Toni Holguin, Human Resources Assistant.

ISSUE:

Was the claimant discharged from her job assignment due to job connected misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant first began with Aventure in 2008 and has been placed on and off through the years at different companies for differing periods of time. The claimant was last assigned to work at A-1 Fiber Glass as a full-time general laborer beginning on March 17, 2016 through June 17, 2016 when A-1 Fiber opted to release her from her assignment. The employer's client opted to release the claimant because she told some of her coworkers that she was only going to be able to work 20 hours per week in the future as she was seeking disability and her attorney had advised her to work less hours. The claimant has no doctor's restrictions preventing her from working full-time hours; she is simply choosing to work less hours in an effort to obtain disability benefits.

After being released from the A-1 assignment, the claimant did contact Aventure Staffing within three working days seeking an additional assignment. At that time none were available for her. The claimant had not previously asked Aventure Staffing to limit her hours of work to no more than 20 per week due to her disability claim.

The claimant has since been offered differing job assignments. There has not been a fact-finding interview on the claimant's refusal of work or on whether she is able to and available for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from the assignment 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).

The claimant mentioned to her coworkers that at some point in the future she was no longer going to work 40 hours per week due to her attempt to obtain disability benefits. The employer's client determined to end the claimant's assignment on that basis. The claimant did not refuse to work hours requested since she worked 40 hours per week or full time right up until the time of her dismissal from the assignment. Claimant is still eligible for work assignments from this employer as her employment has not been ended. The client company's separation in anticipation of the claimant not being able to work, is not job connected misconduct sufficient to disqualify her from receipt of unemployment insurance benefits. The employer's evidence does not establish job connected misconduct as the reason for the claimant's separation from her assignment. Since employer has not established misconduct with respect to the separation from the assignment, benefits are allowed on that basis. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND:

The issues as to whether the claimant is able to and available for work and whether she refused suitable offer(s) of work is remanded to the unemployment insurance service center for an initial review and determination.

DECISION:

The July 6, 2016, reference 01, decision is affirmed. The claimant's separation from the assignment was not disqualifying. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs