

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTINA THOMAS
Claimant

APPEAL NO: 16A-UI-11906-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 10/09/16
Claimant: Respondent (2)

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 1, 2016, reference 02, 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 November 18, 2016. The claimant participated in the hearing. Melissa Lewien, Risk Management, participated in the hearing on behalf of the employer.

ISSUE:

The issue is 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 agricultural general laborer for Advance Services last assigned at Pioneer from August 10, 2016 to October 10, 2016. The client ended the claimant's assignment October 10, 2016, because she was not available to work the hours scheduled.

When the claimant was notified her assignment was over October 11, 2016, she asked the employer if it had any other work available. The employer told her it did and instructed the claimant to stop in after lunch but the claimant did not contact the employer again until October 18, 2016. The claimant stated she needed to secure a babysitter before she could start another assignment. On October 27, 2016, the employer called the claimant about a position at West Liberty Foods. The claimant stated she was still looking for a babysitter and would call the employer back that day or the following morning. The employer told her there was a class for West Liberty Foods starting October 31, 2016. The claimant did not contact the employer. On October 31, 2016, the employer contacted the claimant and she indicated she was still interested in the position but still needed to find a babysitter. On November 2, 2016, the employer called the claimant and offered her a position at Kness and the claimant stated she would check with her babysitter and call the employer back but did not do so. On November 4, 2016, the employer notified the claimant it had lined up an interview for her with West Liberty Foods November 9, 2016, and the claimant said she accepted another position.

The claimant was disqualified on another issue and consequently has not received any benefits to date.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment without good cause attributable to the employer.

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).

Iowa Code § 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. (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.

The employer has not established misconduct on the part of the claimant as defined by Iowa law. The remaining issue is whether the claimant sought reassignment from the employer. While the employer's policy requires employees to seek reassignment from the employer within three 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. In this case, the claimant asked about another assignment the day she learned her assignment at Pioneer was over but did not make herself available for any of the subsequent interviews, classes or assignments the employer had available. Although the claimant asked about other assignments October 11, 2016, she did not make herself available for another assignment. Simply asking if the employer has other work available with no subsequent follow through on the assignments the employer had for her does not fulfill the spirit of the law or qualify as making a request for another job assignment. Therefore, benefits are denied.

DECISION:

The November 1, 2016, reference 02, decision is reversed. The claimant's separation from employment was not attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/rvs