

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**LISA L TYLER**  
Claimant

**APPEAL NO. 18A-UI-08053-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEMP ASSOCIATES – IOWA INC**  
Employer

**OC: 07/08/18**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Lisa Tyler (claimant) appealed a representative's July 23, 2018, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits due to her 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 held on August 16, 2018. The claimant participated personally until she disconnected from the hearing. The employer participated by Susan Watkins, Branch Manager.

**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 agency. The claimant performed services from September 6, 2016, through May 1, 2018. She signed a document on November 12, 2017, indicating she was to contact the employer within three working days following the completion of an assignment to request placement in a new assignment. The document did indicate the consequences of a failure to notify the employer. The claimant was given a copy of the document which was separate from the contract for hire.

The claimant was assigned to work for Clinton Community School District on November 15, 2017, from 6:30 a.m. to 8:15 a.m. as a part-time school aid. On April 5, 2018, the employer issued the claimant a verbal warning for keeping her cellphone with her at work in violation of the policies the claimant signed for on November 12, 2017. The employer also talked to the claimant about reporting her absences at the last minute. The employer notified the claimant that further infractions could result in termination from employment.

On April 20, 2018, the claimant did not appear for work or properly report her absence. At 11:41 a.m., after her shift ended, the claimant emailed the employer apologizing for

oversleeping. The employer issued the claimant a last chance written warning for her failure to report her absence and improperly using her cellphone at work.

On April 29, 2018, the claimant used her cellphone at work. The employer knew this because it could see the date and time of the claimant's posts to her Facebook account. The claimant did not tell the employer she wanted to look at her cellphone to see if her seventeen-year-old daughter contacted her about the claimant's boyfriend. The claimant was seeking a restraining order on the boyfriend and did not think the employer had a right to know this information. On May 1, 2018, the employer terminated the claimant from the assignment. The claimant did not request reassignment.

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

For the reasons that follow the administrative law judge concludes the claimant discharged for misconduct.

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(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 employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the employer's instructions regarding her cellphone. The claimant's disregard of the employer's interests is misconduct. As such the claimant is not eligible to receive unemployment insurance benefits.

In the alternative, the claimant did not seek reassignment and is not eligible to receive unemployment insurance benefits.

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 followed the requirements of the code. The claimant did not. She did not request reassignment. Benefits are denied.

**DECISION:**

The representative's July 23, 2018, decision (reference 01) is affirmed. The claimant is not eligible to receive unemployment insurance benefits because the claimant was discharged from work for misconduct. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

---

Beth A. Scheetz  
Administrative Law Judge

---

Decision Dated and Mailed

bas/rvs