

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LJILJA S SUSAC
Claimant

APPEAL NO. 07A-UI-06314-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

R J PERSONNEL INC
Employer

**OC: 05/27/07 R: 04
Claimant: Respondent (1)**

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 18, 2007, reference 03, that concluded the claimant's discharge was not for work-connected misconduct. A telephone hearing was held on July 13, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing with the assistance of an interpreter, Zijo Sucasca. Kris Ward participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer from November 20, 2006, to March 20, 2007. She was assigned to work at West Liberty Foods as a laborer. She applied for the job at the West Liberty Foods plant. When the claimant was hired, she signed a statement that she would be considered to have voluntarily quit employment if she did not contact the employer within three working days after the completion of a job assignment and request a new assignment. The claimant's primary language is Bosnian, and she is not competent speaking and reading English. The statement was in English, and she did not know that she had to contact the employer within three working days after the completion of a job assignment.

On March 20, 2007, the claimant was terminated by West Liberty Foods for missing work. She was discharged for excessive absenteeism. Her last absence was due to a severe snow storm that prevented the claimant from driving the 50 miles from her residence to the plant. West Liberty Foods alleged the claimant did not call to report her absence but that was not true, as the claimant did call in properly.

The claimant did not contact the employer because she reasonably believed she had been fired and did not know that she was required to call the employer.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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 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.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing the credibility of the witnesses and the reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly about the reason she missed work and that she had properly reported her absence to West Liberty Foods. Her testimony outweighs the employer's hearsay evidence.

Iowa Code section 96.5-1-j provides that individuals employed by a temporary agency must contact their employer within three working days after the completion of a work assignment and seek a new assignment or they will be considered to have voluntarily quit employment without good cause attributable to the employer, provided that the employer has given them a statement to read and sign that advises them of these requirements.

The purpose of the statement is to make sure employees understand what is required and the consequence if they do not contact the employer. In this case, because of the claimant's language difficulties, she did not understand the requirement or consequence of failing to comply with the

requirement. Under the circumstances, the claimant is not subject to disqualification under Iowa Code section 96.5-1-j.

DECISION:

The unemployment insurance decision dated June 18, 2007, reference 03, is affirmed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw