

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SALAMO M AHMED**

Claimant

**APPEAL NO: 14A-UI-01376-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RANDSTAD GENERAL PARTNER US LLC**

Employer

**OC: 01/05/14**

**Claimant: Appellant (2)**

Section 96.5-1-j – Temporary Employment  
871 IAC 24.26(15) – Temporary Employment  
Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

Salamo M. Ahmed (claimant) appealed a representative's February 3, 2014 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits after a separation from employment Randstad General Partner U.S., L.L.C. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 27, 2014. The claimant participated in the hearing. Teresa Ray appeared on the employer's behalf and presented testimony from one other witness, Keith Jones. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

**FINDINGS OF FACT:**

The employer is a temporary employment firm. The claimant's first and only assignment with the employer began on April 11, 2013. She worked full time as a warehouse and assembly worker on an overnight shift at the employer's Des Moines, Iowa business client's facility. Her last day on the assignment was the shift from the evening of December 12 into the morning of December 13, 2013. The assignment ended because the employer's business client determined to end it because the claimant would not comply with a change in the business client's dress code policy. The employer secondarily asserts that the claimant voluntarily quit by not seeking reassignment after the ending of the assignment.

The business client had determined to modify its dress code to prohibit the wearing of skirts in the warehouse area, due to safety concerns. The change in the policy became effective on December 16. On December 16 the claimant, a member of the Muslim faith, sought to report for work wearing a skirt. The employer sent her home and informed her that she could not continue in the employment unless she would wear pants or slacks. When she protested that

this was against her faith, she was advised to go to the head of her religious leader and seek an exception for work. The claimant did so, but the leader of her mosque informed her that no exception could be granted. Therefore, because the claimant could not comply with the revised dress code, the claimant's assignment ended.

On December 17 the claimant contacted the employer and indicated she could not get an exception. She inquired if there was other work, but was told that the only second shift work was with this same business client with the same dress code issue. The claimant could only work the second or overnight shift.

The employer has a provision indicating that the assignee is to call the employer within three working days of completion of the assignment to seek reassignment. The employer asserted that the claimant failed to seek reassignment.

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

The essential question in this case is whether there was a disqualifying separation from employment. The first subissue in this case is whether the employer or the business client ended the claimant's assignment and effectively discharged her for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer or client was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate questions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer or its business client for ending the claimant's assignment is the claimant's refusal to comply with the revised dress code requirements. Whether a refusal to perform a specific task constitutes misconduct is determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's

reason for noncompliance. *Endicott v. IDJS*, 367 N.W.2d 300 (Iowa App. 1985); *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768 (Iowa App. 1982). While the business client's dress code requirement may have been a well-reasoned, the claimant's declining to comply due to her faith is not misconduct. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

The second subissue in this case is whether the claimant voluntarily quit by failing to affirmatively pursue reassignment.

An employee of a temporary employment firm who has been given proper notice of the requirement can be deemed to have voluntarily quit her employment with the employer if she fails to contact the employer within three business days of the ending of the assignment in order to notify the employer of the ending of the assignment and to seek reassignment. Iowa Code § 96.5-1-j. The intent of the statute is to avoid situations where a temporary assignment has ended and the claimant is unemployed, but the employer is unaware that the claimant is not working could have been offered an available new assignment to avoid any liability for unemployment insurance benefits. Where a temporary employment assignment has ended by the completion of the assignment of and the employer is aware of the ending of that assignment, the employer is already on "notice" that the assignment is ended and the claimant is available for a new assignment; where the claimant knows that the employer is aware of the ending of the assignment, she has good cause for not separately "notifying" the employer. Further, in this case the claimant reasonably believed that she had sought reassignment by her contact with the employer after the ending of the assignment. 871 IAC 24.26(15).

Here, the employer was aware that the business client had ended the assignment; it considered the claimant's assignment to have been completed, albeit unsatisfactorily. The claimant is not required by the statute to remain in regular periodic contact with the employer in order to remain "able and available" for work for purposes of unemployment insurance benefit eligibility. Regardless of whether the claimant continued to seek a new assignment, the separation itself is deemed to be completion of temporary assignment and not a voluntary leaving; a refusal of an offer of a new assignment would be a separate potentially disqualifying issue. Benefits are allowed, if the claimant is otherwise eligible.

**DECISION:**

The representative's February 3, 2014 decision (reference 01) is reversed. The claimant did not voluntarily quit and the employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/css