

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN BROOKMAN
Claimant

APPEAL NO. 17A-UI-07619-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

REMEDY INTELLIGENT STAFFING INC
Employer

OC: 12/25/16
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.5-1-j – Separation from Temporary Employer
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Remedy Intelligent Staffing (employer) appealed a representative's July 18, 2017, decision (reference 03) that concluded Brian Brookman (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 14, 2017. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Vicky Matthias. The employer offered and Exhibits 1 and 2 were received into evidence. Exhibit D-1 was received into evidence.

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 service. The claimant performed services from February 13, 2017 through June 21, 2017. He did not sign a document indicating he was to contact the employer within three days following the completion of an assignment to request placement in a new assignment.

On February 6, 2017, the claimant completed an individualized assessment form. He answered only one question of seven on the form. "Please list the crimes and dates for which you have plead guilty, "no contest," or been convicted of a felony or misdemeanor crime in the past seven (7) years." The claimant answered, "none". The claimant's signature did not certify that his answer was correct. Prior to assigning him to work at Blackhawk Engineering, an Iowa background check was performed and nothing was found. On February 13, 2017, the claimant was assigned to work at Blackhawk Engineering. He worked until June 21, 2017, when Blackhawk Engineering found the claimant's involvement in a Florida misdemeanor four years earlier. Blackhawk Engineering gave the employer no other information. The claimant remembers seeking reassignment from the employer. No work was available.

The claimant filed for unemployment insurance benefits with an effective date of December 25, 2017. The employer participated personally at the fact finding interview on July 17, 2017, by Vicky Matthias.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is disqualified. The judge concludes he is not.

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).

Iowa Admin. Code r. 871-24.32(6) provides:

Discharge for misconduct.

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in

jeopardy, such falsification shall be an act of misconduct in connection with the employer.

First, the employer must prove the claimant willfully made a false statement on his work application. The claimant denied he was convicted of a crime on an Individualized Assessment Form, not a job application. The employer asserts the claimant made a false statement but they have not offered any proof to the contrary. The employer does not have the date, location, or information about any crime the claimant has committed. It has some sparse details their customer gave to them. Secondly, the employer must prove the falsification could result in harm to others. The employer did not provide any evidence of harm to the claimant or others.

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 did not provide the claimant with the proper

notice requirements and has, therefore, failed to satisfy the requirements of Iowa Code Section 96.5-1-j. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's July 18, 2017, decision (reference 03) is affirmed. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs