

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

THOMAS JOHNSON
Claimant

WORKSOURCE INC
Employer

APPEAL 15A-UI-03355-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/22/15
Claimant: Appellant (2R)**

Iowa Code § 96.5(2)a – Discharge for Misconduct/Requalification
Iowa Code § 96.5(1)j – Voluntary Leaving – Temporary Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 12, 2015, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 22, 2015. Claimant participated. Employer did not participate.

ISSUE:

Was the claimant discharged due to job-connected misconduct and has he requalified for benefits since his separation from this employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was last assigned to work at Area Diesel full time as a warehouse assistant beginning in September 2014 through late December 2014 when he was discharged by the assignment. The claimant contacted Worksource, Inc. immediately after being discharged and spoke to Curtis. He was told by the Worksource, Inc. employee that he should not worry about being let go from Area Diesel as the manager there, Cory, was difficult to work for and he was the third temporary employee that had been fired from that position. The claimant asked for any other additional assignment and was told the employer would get back to him with additional offers. The employer never provided the claimant with any additional work.

The claimant has since worked for another employer and earned approximately \$2400.00, thus he has requalified for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from the assignment for no disqualifying reason.

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).

Since no evidence establishes misconduct with respect to the separation from the assignment, benefits are allowed on that basis. The next question is whether claimant's separation from the temporary agency employer is disqualifying.

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. 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.

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.

For the purposes of this paragraph:

(1) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(2) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Iowa Admin. Code r. 871-24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code § 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code § 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of the temporary assignment. In this case, the employer had notice of the claimant's availability because he notified them of the end of the assignment. Since there were no additional assignments, benefits are allowed.

The claimant appears to have requalified for unemployment insurance benefits since his separation. The case is remanded to the UISC for a determination as to whether the claimant has requalified and Worksource Inc. account should be charged for benefits.

DECISION:

The March 12, 2015, reference 02, decision is reversed. The claimant's separation from the assignment was not disqualifying and because the claimant had adequate contact with the employer about his availability as required by statute, the separation from the employment was attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND: The issue of whether the Worksource, Inc. employer account is subject to charge based on the claimant requalifying for benefits is remanded for a determination.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css