

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**MARILYN YIRENKYI
4127 NE 2ND ST
COLUMBIA HEIGHTS MN 55421**

**USA STAFFING INC
LABOR WORLD OF IOWA
3921 NE 14TH ST
DES MOINES IA 50313**

**Appeal Number: 06A-UI-05848-DT
OC: 04/30/06 R: 02
Claimant: Respondent (1/R)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1-j – Temporary Employment
871 IAC 24.26(19) – Temporary Employment
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

USA Staffing, Inc. (employer) appealed a representative's May 25, 2006 decision (reference 02) that concluded Marilyn Yirenkyi (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 22, 2006. The claimant participated in the hearing. Melissa Arneson appeared on the employer's behalf. 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?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant's first and only assignment with the employer began on or about December 13, 2005. Her last day on the assignment was the shift that began the evening of January 12 and ended the morning of January 13, 2006. The assignment ended because the employer's business client determined to end it because of work she had missed and because of a personality conflict between the claimant and the employer's client's employees.

The claimant's assignment was performing custodial services in the state capitol building. Beginning on January 2, 2006, the claimant's schedule was switched from days to be from 10:30 p.m. to about 6:00 a.m. She was a no-call/no-show for work on the first day of that schedule, the shift that began the evening of January 1 and ended the morning of January 2; she had misunderstood that the first day of the changed schedule was to have been the shift that began the evening of January 2, not the shift that ended the morning of January 2. The claimant had been late on one day, January 12, because her car would not start. She called to report her situation and did later arrive for work. There had not been a warning to the claimant regarding her attendance.

The claimant had difficulties working with two of the employer's client's employees, who the claimant felt were not doing their jobs and were giving her their work to do. The claimant had called Ms. Arneson, the branch manager, about her concerns on or about January 6 as well as other occasions. Ms. Arneson discussed the claimant's concerns with the client's manager, who denied that the client's employees were acting inappropriately, but the client's manager was not on site during the claimant's work shift.

On the evening of January 12, the claimant had another incident with the client's two employees; they told her that if she complained, she would be let go. The claimant believed she was being harassed and that she had no proper recourse other than to report the situation to the employer, which she did by a call to Ms. Arneson at 12:56 a.m. The next morning, the employer's client determined to have the claimant replaced in the assignment.

The employer indicated that there may have been an offer of employment made to the claimant approximately February 13, 2006, and that the claimant may have indicated that she was no longer available for assignments.

REASONING AND CONCLUSIONS OF LAW:

The essential question in this case is whether there was a disqualifying separation from employment through the employer or the employer's client ending of the claimant's assignment, effectively discharging her. The issue is whether this discharge was 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 section 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).

The focus of the definition of misconduct is on acts or omissions by a claimant that “rise to the level of being deliberate, intentional or culpable.” Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The acts must show:

1. Willful and wanton disregard of an employer’s interest, such as found in:
 - a. Deliberate violation of standards of behavior that the employer has the right to expect of its employees, or
 - b. Deliberate disregard of standards of behavior the employer has the right to expect of its employees; or
2. Carelessness or negligence of such degree of recurrence as to:
 - a. Manifest equal culpability, wrongful intent or evil design; or
 - b. Show an intentional and substantial disregard of:
 1. The employer’s interest, or
 2. The employee’s duties and obligations to the employer.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

The reason the employer was forced to discharge the claimant from her assignment was primarily the conflict between the claimant and the client's employees. The employer has not established by a preponderance of the evidence that the claimant was the party most at fault in the interpersonal conflict. As to the secondary reason for separation, the claimant's attendance, in order to be misconduct, absenteeism must be both excessive and unexcused. The record does not establish that the claimant's absences were both excessive and unexcused. Nor was she previously warned that additional attendance problems could result in her termination from the assignment. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984). The employer has failed to meet its burden to establish misconduct. Cosper, supra. Benefits are allowed, if the claimant is otherwise eligible.

Issues as to whether the claimant might have refused a suitable offer of work or might have made herself unavailable for work arose during the hearing. These issues were not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's May 25, 2006 decision (reference 02) is affirmed. 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. The matter is remanded to the Claims Section for investigation and determination of the refusal and able and available issues.

ld/kkf