

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES B SING
Claimant

PERSONNEL STAFFING GROUP LLC
Employer

APPEAL 16A-UI-02975-NM-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/24/16
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 4, 2016, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary quit. The parties were properly notified of the hearing. A telephone hearing was held on March 29, 2016. The claimant James Sing participated and testified. Prior to the hearing, the employer indicated it would not be participating in the hearing. Exhibit 1 was received into evidence.

ISSUE:

Was the claimant discharged from the temporary assignment for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits or did he quit by not reporting for additional work assignments within three business days of the end of the last assignment?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a temporary employee. Claimant's last assignment prior to filing for benefits lasted from June 11, 2015, until he was separated from the assignment, but not the employment, on Friday, January 22, 2016. Claimant's assignment ended due to lack of available work.

On Tuesday, January 26, 2016, claimant notified his employer that the assignment had ended. Claimant was not sure if the employer had a policy in place requiring him to make such notices within a certain time frame, but could not recall reading, signing, or receiving such a policy. On January 26, claimant spoke to Cassie Dilly. Dilly was surprised that claimant's assignment ended, but was able to get him another assignment beginning on February 5, 2016. That assignment ended on February 24, 2016, due to lack of work. Claimant immediately notified Dilly his assignment had ended and was given a new assignment beginning the next day. That

assignment, claimant's most recent, ended on March 7, 2016 due to lack of work. Claimant notified Dilly his assignment had ended on March 8, 2016. Dilly did not have a new assignment at that time, but instructed claimant to check in every Tuesday until an assignment became available, which he has done.

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).

There are no allegations that any of claimant's assignments ended for reasons related to misconduct. Since the employer has not established 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 section 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 section 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.

Claimant denied receiving a copy of any policy that required him to report an assignment ending within a certain time frame. Since the employer provided no evidence that it presented claimant with a written copy of the reporting policy, claimant's recollection that he did not receive notice of the reporting policy is credible. Without that, claimant was reasonable to opt to look for work elsewhere or to report for additional work when he did, though it appears claimant reported for additional assignments within three business days each time his assignments ended. Benefits are allowed.

DECISION:

The March 4, 2016, (reference 01) unemployment insurance decision is reversed. The claimant's separation from the assignment was not disqualifying and because he had adequate contact with the employer about his availability and requested further work as required by statute, the separation from the employment is also not disqualifying. Benefits are allowed, provided the claimant is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/pjs