

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

WENDY J JONES
Claimant

APPEAL NO. 17A-UI-12763-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PEOPLEREADY INC
Employer

OC: 11/12/17
Claimant: Appellant (2)

Section 96.5-1-j – Separation from Temporary Employer

STATEMENT OF THE CASE:

Wendy Jones (claimant) appealed a representative's December 6, 2017, decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits due to her separation from work with Peopleready (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 5, 2018. The claimant participated personally. The employer participated by Darla Fowlkes, Customer Service Representative, and Amanda Tyler, Customer Service Representative. The claimant offered and Exhibit A 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 off and on from April 20, 2016, through October 26, 2017. She may have signed a document on April 10, 2017, indicating she was to contact the employer within three days following the completion of an assignment to request placement in a new assignment. The employer's Acknowledgement Form for the State of Iowa indicates the consequences of failure to notify the employer when an assignment ends. The claimant was not given a copy of any such document. An Acknowledgement Form is not separate from an employee contract for hire.

During her last assignment the claimant worked for Cedar Falls Construction Company as a flagger. On October 26, 2017, the claimant returned home from a job site with her co-workers to get warm clothing for the upcoming cold weather. She was required to travel with her co-workers. The two co-workers argued and threatened each other during the drive. The claimant felt threatened. The two said they would not work with each other. The following morning, the two could not be reached to ride to the job site with the claimant. The claimant contacted the employer five hours prior to the start of the shift. The drive time was three hours. The employer was unable to find replacement workers.

On October 27, 2017, the employer met with the claimant. The employer told the claimant that in the event that Cedar Falls Construction Company was not able to finish the job on time she would be terminated. The employer said it was because it would cost the employer hundreds of thousands of dollars that the employer would owe back to Cedar Falls Construction because of the claimant's actions. The employer told the claimant she better hope construction could continue on October 30, 2017. The claimant said she was willing to work on October 30, 2017. The employer did not ask the claimant to return to work after October 26, 2017. The claimant offered to take jobs on October 30 and November 5, 2017. The employer ignored the claimant's texts.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not separated from employment for a disqualifying reason.

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.

In the alternative, the claimant was not discharged for misconduct.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer terminated the claimant because her co-workers would not return to work with her on October 27, 2017, the claimant was threatened by the co-workers, and the employer could not find replacement workers. The claimant is not responsible for the actions of her co-workers. The employer did not meet its burden of proof to show any misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's December 6, 2017, decision (reference 02) is reversed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs