

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TYISHA ROBINSON
Claimant

APPEAL NO. 13A-UI-11331-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LA LEASING INC
SEDONA STAFFING
Employer

OC: 09/08/13
Claimant: Appellant (1)

Section 96.5-1 – Voluntary Quit Section
Section 96.5-1-j – Separation from Temporary Employer

STATEMENT OF THE CASE:

Tyisha Robinson (claimant) appealed a representative's October 1, 2013, decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was discharged from work with Sedona Staffing (employer) for violation of a known company rule. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 31, 2013. The claimant provided a telephone number but could not be reached at the time of the hearing. The administrative law left two messages for the claimant. The claimant did not return the messages before the close of the record and, therefore, did not participate. The employer participated by James Cole, Manager.

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 at Rocktenn from June 7 through September 12, 2013. She signed a document on May 30, 2013, before she started work, indicating that she was to contact the employer within three days following the completion of an assignment to request placement in a new assignment. The claimant was given a copy of the document which was separate from the contract for hire.

The claimant signed for receipt of the Rocktenn handbook on May 30, 2013, before she started her assignment. The handbook prohibits food or candy on the work floor. On August 27, 2013, the shift supervisor issued the claimant a verbal warning for chewing gum on the work floor. On September 12, 2013, the shift supervisor issued the claimant a written warning for chewing gum on the work floor. The claimant became belligerent with the supervisor and the supervisor ended the claimant's assignment. The claimant did not seek reassignment from the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was separated from the employer for a disqualifying reason.

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.

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). Repeated failure to follow an employer's instructions in the performance of duties is misconduct. Gilliam v. Atlantic Bottling Company, 453 N.W.2d 230 (Iowa App. 1990). An employer has a right to expect employees to follow instructions in the performance of the job. The claimant disregarded the employer's right by repeatedly failing to follow the instructions on assignment. The employer terminated the claimant's assignment for failure to follow instructions. The claimant's disregard of the employer's interests is misconduct.

Iowa Code section 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.

The claimant did not request reassignment and has, therefore, failed to satisfy the requirements of Iowa Code section 96.5-1-j. Benefits are denied.

DECISION:

The representative's October 1, 2013, decision (reference 01) is affirmed. The claimant was separated from the employer for no good cause attributable to the employer. Benefits are withheld until the claimant has worked in and has been paid wages for insured work equal to ten times the claimant's weekly benefit amount provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css