

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**JENNIFER DIAZ**  
Claimant

**APPEAL NO. 18A-UI-10559-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PEOPLE 360 LLC**  
Employer

**OC: 05/13/18**  
**Claimant: Respondent (1)**

Section 96.5-1 - Voluntary Quit  
Section 96.5-2-a – Discharge for Misconduct  
Section 96.3-7 – Overpayment

**STATEMENT OF THE CASE:**

People 360 (employer) appealed a representative's October 16, 2018, decision (reference 02) that concluded Jennifer Diaz (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 6, 2018. The claimant participated personally. The employer participated by Leanna Gobel, Controller, and Justin Gobel, Owner. 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 claimant was hired on December 18, 2017, as a full-time staffing recruiter. The claimant signed for receipt of the employer's handbook when she accepted the job. The offer letter said she should report her absences to the owner. If she were absent, the claimant should report absences to Leanna Gobel, the owner's ex-wife.

On September 19, 2018, the claimant was supposed to be at work at 8:00 a.m. The controller was going to be out of town. The claimant requested a late report of the owner when her landlord asked her for something. The owner told her the late report was approved. At 8:12 a.m., the controller sent a text to the owner and the claimant asking if either of them were coming to work. The owner texted, "I will b there between 8 and 830 just like u have this week".

The controller texted, "So, Jenny, I take it you just quit then?" The owner responded, "She has already communicated with me that she will b in shortly..Just as u communicated that you would not be in today". The claimant called the controller to say she was on her way to work. The controller thought the claimant was hostile and responded with frustration and yelling. The claimant repeatedly assured the controller she was on her way to work. Finally, the claimant

asked the controller what she wanted her to do. The controller told her to turn in her key and get her things. The claimant arrived at work and followed the controller's instructions. The controller arrived at work and asked the claimant if she had her key. The claimant responded that she already gave it to the owner.

The claimant filed for unemployment insurance benefits with an effective date of May 13, 2018. The employer participated personally at the fact finding interview on October 11, 2018, by Leanna Gobel.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant did not voluntarily quit work.

Iowa Code section 96.5(1) 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.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant had no intention to leave work. The separation is determined to be involuntary.

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 did not provide any evidence of job-related misconduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's October 16, 2018, decision (reference 02) is affirmed. The employer has not met its burden of proof to establish job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs