

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JUSTIN E TAMMINGA**

Claimant

**1<sup>ST</sup> CLASS STAFFING LLC**

Employer

**APPEAL 15A-UI-08366-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/21/15**

**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge/Misconduct

Iowa Code § 96.5(1)j – Voluntary Leaving – Temporary Employment

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 21, 2015, (reference 02) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on August 19, 2015. The claimant participated personally. Although properly notified for the hearing, the employer elected not to participate.

**ISSUE:**

The issue is whether claimant was discharged from the temporary assignment for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits and if he quit the employment without good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant last worked on assignment for Jacobsen for three years as a warehouseman pulling orders until June 12, 2015. The claimant called off his shift, the night before June 12, 2015. The claimant contacted the site manager, Chris Kiger, to say he would be absent for his shift. The claimant had previously been warned on assignment about his attendance. It was the claimant's understanding that his job was not in jeopardy as he had only one warning, and the employer's practice was to issue progressive discipline, including suspension before separation.

The employer called the next day and told the claimant he was no longer needed. The claimant had no additional contact with the employer. The employer had purchased the prior staffing company for which the claimant worked. The claimant had contact only one time prior to being told his assignment ended, and that was to renew his forklift license. The claimant was not offered any additional work and never informed if he was eligible or ineligible for future assignments. The claimant had worked the same assignment for three years and had not been provided the current employer's policy for requesting assignments.

## 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).

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 the 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 § 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 § 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.

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, the claimant was reasonable to opt to look for work elsewhere or to report for additional work when he did. Benefits are allowed.

**DECISION:**

The July 21, 2015, reference 02, decision is reversed. The claimant's separation from the assignment was not disqualifying and because the claimant had adequate contact with the employer about his availability as required by statute, the separation from the employment was attributable to the employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Jennifer L. Coe  
Administrative Law Judge

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Decision Dated and Mailed

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