

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

NICHOLAS G TERBOVIC

Claimant,

and

ADECCO USA INC

Employer.

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HEARING NUMBER: 10B-UI-01970

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1, 96.3-7

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

The Board notes that we disqualify this Claimant even though he remains eligible for assignment. Iowa's Employment Security Law is to be interpreted "for the benefit of persons unemployed through no fault of their own." Iowa Code §96.2 (2009). This Claimant is not unemployed through no fault of his own. This is unchanged by his remaining eligible for reassignment.

For a single employer if an employee commits misconduct and then is disciplined with a suspension/layoff that employee would be "unemployed" and could meet the requirement of Code §96.4. Yet under the rules, "[w]henver ...the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved." 871 IAC 24.32(9). This rule balances the interests involved. If the claimant does not commit misconduct they get benefits. This protects workers against the ravages of involuntary unemployment. But if they do commit misconduct they are disqualified. This discourages

misconduct and prevents people from being able to qualify themselves for benefits through intentional or reckless conduct. Finally, the mere fact of continued employment status does not prevent possible disqualification for misconduct. This means employers are not punished for being lenient and workers are less likely to get fired – which promotes the goals of the reducing unemployment.

A temporary employee who is forcibly removed from an assignment in reaction to something he or she did is effectively placed on unpaid status as a disciplinary measure. This is a “disciplinary layoff or suspension imposed by the employer” as contemplated by 24.32(9). The evidence in this case establishes disqualifying misconduct. Thus even if we take into account that the Claimant remains eligible for reassignment we disqualify him.

John A. Peno

Monique F. Kuester

Elizabeth L. Seiser

AMG/ss