

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

JENNIFER M MATZEN
1138 – 6TH ST NW
CEDAR RAPIDS IA 52405

B I STAFFING
BURNS STAFFING ADP-UCS
PO BOX 06501
DIAMOND BAR CA 91765-6501

OMNE STAFFING
4 COMMERCE DR
CRAWFORD NJ 07016

Appeal Number: 04A-UI-02246-B4T
OC: 07-27-03 R: 03
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1 – Voluntary Quit
Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Jennifer M. Matzen appealed from an unemployment insurance decision dated February 20, 2004, reference 08, that held, in effect, the claimant was not eligible to receive unemployment insurance benefits and the employer's account would not be charged. The records indicated that the claimant left her employment with B I Staffing, Inc. voluntarily on January 8, 2004, without good cause attributable to the employer.

A telephone conference hearing was scheduled to be held on March 18, 2004 pursuant to due notice. Jennifer M. Matzen responded to the notice of hearing by providing a telephone number where she could be contacted at the time of the scheduled hearing. A call placed to that number resulted in information that no one was available. No one responded on behalf of

B I Staffing, Inc. by providing the name and telephone number where a representative to be contacted. No one responded on behalf of Omne Staffing to the notice of hearing mailed to that employer by the Appeals Section by providing the name and telephone number of a representative to be contacted. There was no hearing held in this matter.

Official notice was taken of the unemployment insurance decision dated February 20, 2004, reference 08, together with the pages attached thereto (three pages in all).

FINDINGS OF FACT:

The administrative law judge, having examined the entire record in this matter, finds that: Jennifer M. Matzen was apparently employed with B I Staffing, Inc./Burns Staffing for a period of time that ended on or about January 8, 2004. A letter from Automatic Data Processing, Inc., dated March 5, 2004, contained in the file, indicates that Automatic Data Processing, Inc. was not the proper recipient for the notice of hearing mailed to B I Staffing, Inc. Information was provided that Omne Staffing was the proper entity to be notified regarding this matter and a notice of hearing was mailed to that employer. No response was made by Omne Staffing.

There was no evidence provided by any employer regarding the nature of the claimant's termination of employment. Neither employer has provided explicit and direct evidence regarding the nature of the claimant's termination of employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5-1 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.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Neither employer provided with a notice of hearing in this matter has provided explicit and direct evidence that would establish the claimant's termination of employment was due to a disqualifiable reason. The record does not establish the claimant left her employment, nor does the record establish that the claimant committed a deliberate act or omission that would constitute misconduct.

The employers have failed to establish a disqualifiable reason for the nature of the claimant's termination of employment.

The administrative law judge concludes that Jennifer M. Matzen was separated from her employment with B I Staffing, Inc./Burns Staffing and/or Omne Staffing for no disqualifiable reason on or about January 8, 2004 within the intent and meaning of Iowa Code Section 96.5-1 and Iowa Code Section 96.5-2-a.

DECISION:

The unemployment insurance decision dated February 20, 2004, reference 08, is reversed. Jennifer M. Matzen was separated from her employment with B I Staffing, Inc. and/or Omne Staffing for no disqualifiable reason on January 8, 2004, and benefits are allowed, provided the claimant is otherwise eligible under the provisions of the Iowa Employment Security Law.

b/b