

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KOLISA P WINSTON
Claimant

APPEAL NO: 13A-UI-02972-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 01/13/13
Claimant: Respondent (1)

Section 96.5-2-a – Discharge/Misconduct
Section 96.5(1)j – Voluntary Leaving (Temporary Employment)

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 8, 2013, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on April 10, 2013. The claimant participated in the hearing. Erin Johnston, Director of Operations, participated in the hearing on behalf of the employer.

ISSUES:

The issues are whether the employer discharged the claimant for work-connected misconduct and whether the claimant sought reassignment from the employer.

FINDINGS OF FACT:

The claimant was employed as a full-time clerical worker for Express Services last assigned at Rain and Hail Insurance from July 30, 2012 to January 10, 2013. Director of Operations Erin Johnston sent the claimant a text message January 10, 2013, notifying her that her assignment was over because the client did not have any further work for her. The claimant called Tori, an employee of Express Services, January 11, 2013, to ask about another assignment because friends of hers that had also completed their assignments with Rain and Hail Insurance had been reassigned and she was hoping to receive another assignment but the employer did not have any further work for her. She continued to call the employer weekly for the next three weeks but the employer did not have any other assignments for her.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left her employment with good cause attributable to the employer and did seek reassignment from the employer.

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.

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 completed the assignment by working until the assignment was over because the client did not have any further work for her. The employer has not established misconduct on the part of the claimant as defined by Iowa law. The remaining issue is whether the claimant sought reassignment from the employer.

The claimant credibly testified she called Tori, an employee of Express Services, to seek further assignment from the employer because friends whose assignments with the employer's client had been completed had received other assignments from the employer. The claimant's call to Tori January 11, 2013, as well as her calls to the employer for the following three weeks, demonstrates her availability and that she sought reassignment from the employer. Therefore, benefits are allowed.

DECISION:

The March 8, 2013, reference 01, decision is affirmed. The claimant's separation from employment was attributable to the employer and she sought reassignment from the employer. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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