

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

DORA ALICIA CHAVEZ  
1340 – 23<sup>RD</sup>  
DES MOINES IA 50311

DES STAFFING SERVICES INC  
3326 INDIANOLA AE  
DES MOINES IA 50315

Appeal Number: 05O-UI-02825-JTT  
OC: 05/09/04 R: 02  
Claimant: Respondent (1)

**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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.5(2)(a) – Discharge for Misconduct  
Section 96.5(1)(j) – Temporary Employee of Temporary Employment Firm

STATEMENT OF THE CASE:

DES Staffing Services filed a timely appeal from the January 24, 2005, reference 04, decision that allowed benefits. After due notice was issued, a hearing was held on April 6, 2005. Dora Chavez participated in the hearing with the assistance of interpreter Rosie Paramo-Rocoy. Elisa Rivera, Placement Specialist, represented DES Staffing and presented additional testimony through Rose Crise, Payroll Coordinator. Exhibit One was received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Dora Chavez was employed through DES Staffing Services from April 24, 2002 until December 6,

2004, when she was discharged from her final assignment, Warren Frozen Foods (Warren), due to an alleged “no-call, no-show.”

The absence that prompted Warren to discharge Ms. Chavez occurred on Saturday, December 4, 2004. Ms. Chavez began her assignment at Warren approximately three weeks earlier. The assignment required her to be available for work 7:00 a.m. to 3:30 p.m. Monday-Saturday, but she was not instructed to appear for a Saturday shift until the Friday prior to Saturday, December 4, 2004. On Friday, December 3, Warren sent workers home due to a lack of work, but instructed them to appear for work the next day.

On Friday, December 3, Ms. Chavez telephoned Elisa Rivera at DES Staffing and asked for another assignment because she only had childcare arrangements for Monday through Friday and would not be able to report for the Saturday shift. Ms. Rivera advised Ms. Chavez that she needed to report to Warren on Saturday, December 4. When Ms. Chavez insisted she could not work the Saturday shift, Ms. Rivera instructed her to report to Warren on Monday, December 6.

On December 6, Ms. Chavez appeared for work at Warren at 6:00 a.m., one hour before the scheduled start of her shift. At that time, a production supervisor questioned her as to why she had been absent on December 4, and then discharged her from that assignment. Warren's human resources department contacted DES Staffing the same day to advise that Ms. Chavez had been discharged for a “no-call, no-show” on December 4. Despite being released from the assignment, Ms. Chavez's relationship with DES Staffing continued.

DES Staffing has a policy that workers employed through their agency must contact the agency within three days of the end of an assignment. On October 11, 2004, Ms. Chavez signed her acknowledgment of receipt of the policy. The document containing the policy statement and Ms. Chavez's acknowledgement was written in Spanish, Ms. Chavez's native language. After being discharged by Warren Frozen Foods, Ms. Chavez contacted DES Staffing by telephone on December 6 to enquire about another assignment. Ms. Chavez continued to contact DES Staffing on a regular basis to enquire about additional employment. It was not until February 15, 2005 that DES Staffing located another position for Ms. Chavez.

DES Staffing manages the employment of 300 temporary workers, but has only two staff members fluent in Spanish. The employment agency's computer documentation of Ms. Chavez's contacts with the agency indicate that Ms. Chavez's first contact with the employment agency after being discharged on December 6 occurred on December 13, 2004, at which time Ms. Chavez enquired about a new assignment.

#### REASONING AND CONCLUSIONS OF LAW:

The first question is whether the evidence in the record establishes that Ms. Chavez was discharged from Warren Frozen Foods for misconduct. It does not. The alleged misconduct consists of one “no-call, no-show.” DES Staffing presented no testimony to indicate additional absences. A single unexcused absence does not constitute misconduct that would disqualify a claimant for benefits. See Sallis v. EAB, 437 N.W.2d 895. Ms. Chavez was not discharged from the last assignment for misconduct. No disqualification for benefits will enter based on the discharge from Warren Frozen Foods.

The next issue is whether the evidence in the record establishes that Ms. Chavez contacted DES Staffing Services within three business days of the end of her assignment at Warren Frozen Foods. It does.

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.

871 IAC 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 section 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 section 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.

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of the temporary assignment.

This matter comes down to the credibility of the individuals who testified at the hearing and the reliability of the information upon which that testimony was based. Both parties had an interest to further at the time they testified. The administrative law judge does not believe either party intentionally misstated the facts. However, the administrative law judge found the testimony of Ms. Chavez to be more reliable. Ms. Chavez had been employed through DES Staffing for more than two and a half years. That she maintained the relationship with DES Staffing for that length of time is an indication that she had mastered the rules of the relationship and had previously complied with the rules of the relationship. DES Staffing's willingness to refer her for additional assignments after she was discharged by Warren Frozen Foods provides an additional indication that she had been a reliable worker. Ms. Chavez testified in detail about the concerns she raised to DES Staffing on December 3 about her inability to work the next day and her follow up with DES Staffing immediately upon being discharged from Warren Frozen Foods. DES Staffing's information and documentation was cursory at best. In addition, Ms. Chavez had only her own affairs to keep track of, whereas DES Staffing had the affairs of 300 temporary workers to manage and document. The administrative law judge is not persuaded that each and every contact between Ms. Chavez and DES Staffing was accurately documented or documented at all. Based on the weight of the evidence and the applicable law, the administrative law judge concludes that Ms. Chavez did contact DES Staffing within three business days of the end of her assignment. Ms. Chavez is eligible for benefits, provided she is otherwise eligible.

#### DECISION:

The Agency representative's January 24, 2005, reference 04, decision is affirmed. The claimant was not discharged from her final assignment for misconduct. The claimant notified the employment agency of the end of her assignment and availability for a new assignment within three days business days of the end of the assignment, as required by statute. The claimant's separation from employment through the temporary employment agency was attributable to the employment agency. Benefits are allowed, provided the claimant is otherwise eligible.

jt/pjs