

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

INDIA M WILLIAMS

Claimant

APPEAL NO. 08A-UI-02838-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC

Employer

**OC: 02/03/08 R: 01
Claimant: Respondent (1)**

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated March 12, 2008, reference 02, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 10, 2008. The claimant participated. The employer participated by Wendy Petersen, Customer Service Representative. Employer's Exhibits One, Two and Three were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for intentional disqualifying misconduct in connection with her work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant last worked for this temporary employment service on January 11, 2008 when she was assigned to work at a Buckey's location for a three-day assignment. Ms. Williams reported for the assignment and after working approximately one-half hour was then instructed by the facility manager to remove a "chin ring." Although the claimant attempted to explain that the removal of the object would be difficult, the manager nonetheless indicated that its removal was a job requirement. Ms. Williams requested a towel and went to a bathroom area and attempted for approximately ten minutes to remove the chin ring but was unable to do so. When the facility manager was informed that the claimant was unable to remove the ring, the manager telephoned Labor Ready and indicated the claimant was "unwilling to remove the ring." The claimant considered the statement to be a lie and to be disrespectful and left the facility as she was unable to comply with the work requirement of removing the ring. Ms. Williams reported back to the Labor Ready Midwest offices to explain the situation and at that time was told by a Labor Ready representative, "You are terminated for walking off the job." Ms. Williams understood the statement to mean that she had been discharged and did not attempt to secure any further temporary assignments through the temporary service. The claimant sought and accepted permanent employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes that the claimant's separation from employment took place under disqualifying conditions. It does not. The evidence in the record establishes that Ms. Williams was sent on a three-day assignment but was not informed in advance that she needed to remove a chin ring to perform her duties at the car wash. After the claimant was allowed to work for approximately one-half hour, she was then told of the work requirement by the facility manager. Although Ms. Williams attempted to the best of her ability to comply, she was unable to remove the chin ring and left the job site after being told that its removal was a job requirement and also because she believed the facility manager was disrespecting her and lying when the manager stated to Labor Ready that the claimant was "unwilling" to remove the ring. The claimant was discharged from employment when she reported to Labor Ready and told at the time that she was being terminated for "walking off the job."

Although the employer disputes the claimant's discharge, the company's perception of the final series of events is based upon hearsay. Although hearsay is admissible in administrative proceedings, it cannot be accorded the same weight as sworn, direct testimony. The administrative law judge finds the claimant to be credible and finds that her testimony is not inherently improbable. Therefore, more weight must be given to Ms. Williams' testimony in this matter.

Based upon the evidence in the record, the administrative law judge concludes that intentional disqualifying misconduct on the part of the claimant has not been shown. The claimant was not informed in advance of the job requirement, she tried but was unable to comply with it and was subsequently discharged for violating a rule that she was unaware of.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant's separation took place under non disqualifying conditions. Benefits are allowed, providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated March 12, 2008, reference 02, is hereby affirmed. The claimant was discharged under non disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs