

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

**APRIL M PORTER**

Claimant

**REMEDY INTELLIGENT STAFFING INC**

Employer

**APPEAL NO. 22A-UI-17631-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/28/22**

**Claimant: Respondent (5)**

Iowa Code Section 96.5(2)(a) & (d) - Discharge  
Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

**STATEMENT OF THE CASE:**

On October 3, 2022, the employer filed a timely appeal from the September 23, 2022 (reference 02) decision that allowed benefits to the claimant, provided the claimant was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's determination the claimant was discharged for no disqualifying reason. After due notice was issued, a hearing was held on October 26, 2022. April Porter (claimant) did not comply with the hearing notice instructions to call the toll-free number at the time of the hearing and did not participate. Vicky Matthias represented the employer. The administrative law judge took official notice of the Iowa Workforce Development record of benefits disbursed to the claimant and received Exhibits 1, the conditional offer of employment, into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

**ISSUES:**

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.

Whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Remedy Intelligent Staffing, Inc. is a temporary employment firm. April Porter, also known as April Evans (claimant), most recently commenced employment with Remedy in May 2022. Prior to the start of that employment, the claimant had most recently worked for Remedy in July 2021. The claimant worked for a different employer between the two distinct periods of employment with Remedy Intelligent Staffing.

The employer had the claimant go through an onboarding process at the start of the employment in May 2022. The employer had the claimant acknowledge a number of documents, including a four-page policy document that covered a broad range of topics and that included an obligation to contact the employer within *two* days of completing an assignment. The May 2022 onboarding did not include having the claimant sign a stand-alone policy that required the claimant to contact the employer within three working days after completing an assignment to request a new assignment or be deemed to have voluntarily quit and risk disqualification for unemployment insurance benefits.

On May 23, 2022, the claimant began a full-time, temp-to-hire work assignment at a General Mills/Blue Buffalo pet food manufacturing facility. The claimant worked as a material handler/fork lift operator. The claimant's work hours were 6:00 a.m. to 2:30 p.m., Monday through Saturday. The employer witness does not know the name of claimant's supervisor at General Mills/Blue Buffalo. Remedy's point of contact at General Mills/Blue Buffalo consisted of three human resources representatives. On July 22, 2022, one of those human resources representatives sent an email message to Vicky Matthias, Remedy Branch Manager, advising that General Mills/Blue Buffalo was ending the claimant assignment that day. In the email, the client's human resources staff set forth a number of alleged violations as follows:

On her phone, outside of break times. Talking on her phone in the bathroom and outside the plant; screaming on the phone; our truck driver heard her and reported an incident[.] After being talked to about this she started using ear buds to talk on the phone[.] She had pop and drinks on the production floor and in the freezer which violates our good manufacturing practices[.] She left ingredients in the hallway rather than putting them away[.] Everyday she leaves at 2:30PM regardless of whether her job is done or whether her team needs assistance[.] She leaves shifts daily without authorization from a supervisor[.] And she very rarely answers when called for on the company radio[.]

The email does not provide dates of alleged violations or who allegedly witnessed the violations, other than mention of an unnamed truck driver.

On July 22, 2022, Ms. Matthias notified the claimant the assignment was ended. Ms. Matthias spoke directly with the claimant. Though the employer asserts the employer was willing to find a new assignment for the claimant, the employer had decided at the time of the July 22, 2022 contact not to offer a new assignment to the claimant in light of the General Mills/Blue Buffalo's allegations and termination of that assignment. On July 22, 2022, the claimant denied most, but not all of the General Mills/Blue Buffalo allegations. The claimant conceded that she sometimes left at 2:30 p.m. and was sometimes on her phone. However, the claimant asserted it was common practice for workers to have soft drinks on the production floor. The employer has submitted no General Mills/Blue Buffalo policies and no Remedy intelligent Staffing policies that concern the alleged rules violations mentioned in the July 22, 2022 email from General Mills/Blue Buffalo.

The claimant did not request a new assignment. The employer did not broach the topic of a new assignment until a month after the claimant's General Mills/Blue Buffalo assignment ended.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). The Legislature recently codified the misconduct definition along with a list of types of disqualifying misconduct. See Iowa Code section 96.5(2)(d).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See Iowa Admin. Code r.871 -24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

The employer presented insufficient evidence, and insufficiently direct and satisfactory evidence, to prove misconduct in connection with the assignment by a preponderance of the evidence. The employer's evidence regarding alleged misconduct is limited to the client's July 22, 2022 email, which lacks dates of alleged violations or who allegedly witnessed the violations, other than mention of an unnamed truck driver. In addition, the employer present no evidence of work rules allegedly violated. No disqualification for benefits may enter in connection with the client's decision to discharge the claimant from the assignment or the employer's decision not to offer the claimant a new assignment in light her assignment being ended.

Iowa Code section 96.5(1)(j) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. (1) 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.

(2) 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.

(3) For the purposes of this paragraph:

(a) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(b) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

Iowa Admin. Code r. 871-24.26(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 evidence in the record establishes the employer did not comply with the notice requirement set forth at Iowa Code section 96.5(1)(j) in connection with the distinct period of employment that began in May 2022 and therefore cannot invoke Iowa Code section 96.5(1)(j) as a reason to disqualify the claimant for unemployment insurance benefits. Because the employer did not meet its obligation under the statute, the statute did not apply to the claimant employment. The claimant fulfilled her obligation to this employer when the assignment was completed on July 22, 2022 and was not obligated to seek a new assignment with this employer. The claimant's separation from the temporary employment agency was for good cause attributable to the temporary employment agency.

The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The September 23, 2022 (reference 02) decision is MODIFIED as follows. The claimant was discharged from the assignment, and effectively discharged from the employment on July 22, 2022 for no disqualifying reason. The claimant's July 22, 2022 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style.

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James E. Timberland  
Administrative Law Judge

November 10, 2022  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://eab.iowa.gov)**

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.

**AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or 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.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: [eab.iowa.gov](http://eab.iowa.gov)**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.