

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANSHALITA S SPATES**

Claimant

**APPEAL NO: 09A-UI-09853-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EXPRESS SERVICES INC**

Employer

**OC: 05/24/09**

**Claimant: Respondent (5)**

Section 96.5-2-a - Discharge  
871 IAC 24.32(1) – Definition of Misconduct

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated July 1, 2009, reference 01, that held the claimant completed a temporary assignment with notice to the employer on May 15, 2009, and benefits are allowed. A telephone hearing was held on July 28, 2009. The claimant participated. Lisa Franzmeier, Staffing Consultant, participated for the employer. Employer Exhibit One was received as evidence.

**ISSUE:**

Whether the claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant began employment on January 29, 2008. The employer is a temporary employment firm. The claimant was placed on a two-week assignment at ConAgra Foods on May 11, 2009. The claimant called-in on May 18 to report she would miss work due to a personal illness, and on May 19 that she would miss work due to a child illness.

Staffing Consultant Franzmeier called the claimant on May 19, and left a message that she had been replaced and dismissed from the ConAgra assignment due to missing work. The claimant was not offered any further work, as the employer had no other assignments at that time. Franzmeier acknowledged that the dismissal was not due to claimant misconduct. The claimant has not been offered any further work by the employer.

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

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.

The administrative law judge concludes the employer has failed to establish that the claimant was discharged for misconduct in connection with employment on May 15, 2009.

The employer acknowledged that the claimant was not discharged for misconduct when it dismissed her from her assignment at ConAgra on May 19, 2009. Since the employer has not offered any further assignment through the date of this hearing, the claimant has been terminated from employment.

**DECISION:**

The department decision dated July 1, 2009, reference 01, is modified with no effect. The claimant was discharged for no misconduct on May 15, 2009. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs