

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LENISHA WEST

Claimant

APPEAL NO: 16A-UI-08549-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC

Employer

OC: 07/03/16

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 July 26, 2016, 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 August 24, 2016. The claimant participated in the hearing. Valerie Hefel, Staffing Consultant, participated in the hearing on behalf of the employer. Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is 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 janitor for Express Services last assigned at Mississippi Valley Carpet Care from January 7, 2016 to April 15, 2016. The claimant's supervisor at her assignment planned to hire her as a full-time employee. The claimant, who had learned she was pregnant, notified her supervisor she was expecting a baby and he advised her it would be better for her to stay with the employer because if the work became too physical she could request another assignment. Her supervisor told her he would hire two additional employees to help her because he did not want her to suffer any adverse consequences to her pregnancy due to her job. He asked her if she would train the two new associates and she stated she would not. The two new associates were hired around April 11, 2016, and the claimant trained them until Friday, April 15, 2016, at which time her supervisor came in and told her he no longer needed her.

The claimant went into the employer's office Monday, April 18, 2016, and notified it her assignment ended and she was available for additional work. The receptionist took her name and telephone number and said the employer did not have any work available at that time but stated the employer would be looking for work for the claimant. The claimant checked in with the employer in person Monday, April 25, 2016, and was again told there was no work available. At that time the receptionist told her she could also check in as available online so the claimant did that occasionally but usually checked in with the employer in person until the time of the

fact-finding interview when she learned the employer did not have records of her in-person check ins. After that time, the claimant checked in online exclusively so she could prove she was checking in weekly. The employer's records reflect the claimant checked in online effective July 25, 2016, and has continued to do so every week since that date.

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.

Iowa Code § 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.

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).

Iowa Code § 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. (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.

The claimant did not quit her assignment but was effectively terminated by her supervisor because she was pregnant. The employer has not established any 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 employer's policy requires employees to seek reassignment from the employer within three days after the end of the assignment and check in as available once per week following that time. In this case, the claimant sought reassignment by asking the employer about additional assignments on the first working day following the completion of her assignment and then checking in either in person or online every week thereafter. The claimant has met the requirements of the rule.

DECISION:

The July 26, 2016, reference 01, decision is affirmed. The claimant's separation from employment was attributable to the employer. Benefits are allowed provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs