

**BEFORE THE
EMPLOYMENT APPEAL BOARD
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321-1270
eab.iowa.gov**

ISABEL M CRUZ

Claimant

and

REMEDY INTELLIGENT STAFFING INC

Employer

: **APPEAL NUMBER: 24B-UI-06119**
: **ALJ HEARING NUMBER: 24A-UI-06119**
:
: **EMPLOYMENT APPEAL BOARD**
: **DECISION**
:
:

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Employer hired the Claimant on June 20, 2023, and assigned her to a temporary, full-time position at its client Resolux Group. The Claimant had concerns throughout her employment about one of her supervisors who was employed by the client. The Claimant believed she and other employees were being treated differently on the basis of their race or national origin. On May 21, 2024, the client ended the Claimant's assignment and discharged the supervisor following its investigation into the work environment. The Claimant spoke with the Employer about the situation the following day. They agreed the Claimant would take about a week off and the Employer would contact her with a new assignment.

On June 6, the Employer contacted the Claimant to offer her a seven-day assignment. The following day, the Claimant declined the job due to child care issues. The Claimant believed the Employer would contact her if they had another assignment. The Claimant and Employer have since spoken about returning the former client's key, but not about a new assignment.

REASONING AND CONCLUSIONS OF LAW:

Did the Claimant quit?

Iowa Code section 96.5(1)j(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 purposes of this lettered 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.

On the issue of whether the Claimant has reported the end of an assignment and requested reassignment pursuant to paragraph "j," the Claimant had the burden of proof by statute. Iowa Code §96.6(2). However, the Employer first has the burden to show whether the Claimant quit or was discharged. *Id.* In general, in cases where the law does not "deem" a quit, then "quitting requires an intention to terminate employment accompanied by an overt act carrying out the intent." *FDL Foods, Inc. v. Employment Appeal Board*, 460

N.W.2d 885, 887 (Iowa App. 1990), *accord Peck v. Employment Appeal Board*, 492 N.W.2d 438 (Iowa App. 1992).

The Iowa Supreme Court explained that Code section 96.5(1) “establishes a general rule that ‘voluntary quitting’ disqualifies an individual from unemployment benefits. However, an individual is not disqualified if 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.’ Additionally, an individual is deemed to have voluntarily quit if the individual fails to notify the temporary employment firm of completion of an assignment within three working days (subject to certain qualifications).” *Sladek v. EAB*, 939 N.W.2d 632, 638 (Iowa 2020). The Court summarized this discussion as “the statute contains (1) a rule, (2) an exception to the rule, and (3) an exception to the exception to the rule.” *Id.*

We have in the past ruled that the Code does not require calling in and requesting reassignment when it is the temporary employer who notifies the Claimant of the end of the assignment and the lack of work. A requirement of a second notice to the Employer who already has actual notice of the end of the assignment would be a pointless exercise and we therefore do not read the law as requiring this.

Here, the Claimant did not voluntarily leave the assignment, nor was the assignment completed. The client ended the assignment due to ongoing issues amongst employees and the Employer notified the Claimant in-person of the end of the assignment. As the Claimant’s assignment did not end because she voluntarily stopped going or the assignment was successfully completed and the Employer had actual notice of the end of the assignment, the Claimant’s separation does not qualify as a quit. As the Claimant’s separation does not qualify under the rule, that she is disqualified due to a voluntarily quit, or the exception, an employee who notifies the temporary firm of the end of the employment may still be eligible for benefits, we do not get to the question of whether the Claimant satisfied the exception to the exception by requesting reassignment in three days.

Was the Claimant discharged for misconduct?

Iowa Code sections 96.5(2)(a)a and (d) provide:

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.

...

d. For the purposes of this subsection, “misconduct” means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

- (1) Material falsification of the individual's employment application.
- (2) Knowing violation of a reasonable and uniformly enforced rule of an employer.
- (3) Intentional damage of an employer's property.
- (4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer, or a combination of such substances, on the employer's premises in violation of the employer's employment policies.
- (5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer's premises in violation of the employer's employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.
- (6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.
- (7) Incarceration for an act for which one could reasonably expect to be incarcerated that results in missing work.
- (8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.
- (9) Excessive unexcused tardiness or absenteeism.
- (10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.

(11) Failure to maintain any license, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual's regular job duties, unless the failure is not within the control of the individual.

(12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.

(13) Theft of an employer or coworker's funds or property.

(14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

As the Claimant is not deemed to have quit the assignment, we must look at whether the assignment ended as a result of disqualifying misconduct. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial."

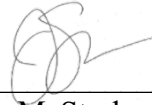
In this case, there were issues at the client's business amongst its employees and the Claimant was involved. However, there is no indication in the record that she was separated from the assignment due to anything she said or did, other than report an issue with a supervisor working for the client. Therefore, the Claimant's separation does not rise to the level of disqualifying misconduct and benefits are allowed based on the separation.

The administrative law judge's decision correctly remands the claim to the Benefits Bureau regarding whether the Claimant refused a suitable offer of work and if she was able to and available for work. These issues with address the Claimant's eligibility following the separation.

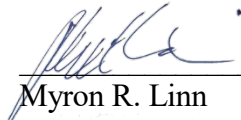
DECISION:

The administrative law judge's decision dated July 29, 2024, is **REVERSED**. The Employment Appeal Board concludes that the Claimant was not separated from employment for a disqualifying reason. Accordingly, benefits are allowed.

The Employment Appeal Board notes the **REMANDS** on the administrative law judge's decision to bring them to the attention of the Benefits Bureau, if they have not already addressed the issues.



James M. Strohman



Myron R. Linn



Ashley R. Koopmans

SRC/mes

DATED AND MAILED AUGUST 29, 2024