

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARIUS A WATT
Claimant

APPEAL NO. 15A-UI-09303-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 07/26/15
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
Section 96.5(1)j – Notice to Temporary Employer of Availability

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated August 15, 2015, reference 01, which allowed benefits without disqualification. After due notice, a telephone hearing was held on September 8, 2015. The claimant participated personally. The employer participated by Ms. Colleen McGinty, Unemployment Insurance Administrator, Mr. Randy Webster, Site Manager, and Mr. Tanner Mechucum, Administrative Assistant.

ISSUES:

The issues are whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits and whether the claimant gave the temporary employer notice of his availability for work within three working days.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Darius Watt was employed by L A Leasing, Inc. from April 28, 2014 until June 17, 2015 when he was removed from his most recent work assignment because the claimant was unwilling to pay a \$5.00 fee to obtain a temporary identification badge for one day's use.

Mr. Watt was separated from his employment with L A Leasing because of an incident that took place on June 17, 2015. On that date, Mr. Watt was observed by the company's site manager at the work location. The site manager noticed that the claimant was not wearing a company identification badge and questioned the claimant about the matter. Mr. Watt indicated that he had never been required to wear a badge in the past and did not have his badge with him for that reason. A lead person who overheard the conversation between Mr. Watt and the site manager suggested that the claimant obtain a "temporary badge" from the RockTenn Company where the claimant was assigned, and use the temporary badge instead of being sent home by the supervisor.

Mr. Watt was agreeable to using the temporary identification badge that he believed would be supplied by the RockTenn Company for one day's use. The claimant, however, was informed by the L A Leasing on site supervisor that he must pay L A Leasing a \$5.00 fee before he would be provided a temporary badge. Based upon the previous conversation with the individual who was directly employed by the RockTenn Company, Mr. Watt believed that the RockTenn Company would provide the temporary badge without charge and the claimant did not want to incur a \$5.00 debt with L A Leasing that would be deductible from his future pay. Mr. Watt continued to believe that the badge was not required because he had not been asked to wear one in the past. Based upon the claimant's reluctance to have \$5.00 deducted from his pay in the future for the one-day use of a temporary badge, a decision was made by L A Leasing's representative to suspend Mr. Watt from employment and remove him from the RockTenn assignment.

Upon leaving the RockTenn business location, Mr. Watt went to the L A Leasing local offices in hopes of obtaining a further explanation as to why he had been suspended and also inquiring about other available work through L A Leasing.

REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether the evidence in the record establishes intentional misconduct on the part of the claimant sufficient to warrant the denial of unemployment insurance benefits. It does not.

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).

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 insurance benefits. Misconduct that may be serious enough to warrant the discharge of an employee may not necessarily be serious enough to warrant the denial of unemployment insurance 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. of Appeals 1992).

In the case at hand, the claimant was unaware that he was expected to wear an identification badge each day at work. Claimant had been assigned to the client employer location for a period of time and had not been informed of the badge requirement, or required to wear an identification badge. When questioned about the matter on June 17, 2015, Mr. Watt attempted to explain that although he had the badge at home, he had not been required to wear it in the past. As an alternative to the claimant being sent home for the day, an employee of the RockTenn Company suggested that the claimant obtain a "temporary badge" from the RockTenn Company to use for that day. The claimant believed that to be a reasonable alternative and was willing to do so.

When informed that he must obtain an identification badge through L A Leasing and pay a \$5.00 stipend, Mr. Watt was reluctant to do so based upon the other reasonable alternative that was readily available to him. The on site representative of L A Leasing suspended Mr. Watt from work that day because in effect, the claimant was unwilling to go \$5.00 in debt when he believed that a badge was readily available at no charge from the client employer.

While the decision to separate Mr. Watt from his employment at that time may have been a sound decision from a management viewpoint, for the above-stated reasons the administrative law judge concludes the claimant's conduct did not rise to the level of intentional disqualifying misconduct that would disqualify him for unemployment insurance benefits. The claimant believed that there was a reasonable alternative available to him and did not want to go \$5.00 in debt to L A Leasing based upon the statements that had been made to him by a RockTenn Company employee about the use of a temporary badge.

The next question before the administrative law judge is whether the evidence establishes that the claimant provided adequate notice to the temporary agency employer of his availability for additional work after the temporary assignment ended. He did.

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. 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.

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.

For the purposes of this paragraph:

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

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

The purpose of the statute is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of each temporary assignment so that the temporary worker may be reassigned and continue working. In this case the claimant was informed that his assignment had ended by a representative of L A Leasing and after being released from the assignment went directly to the local L A Leasing facility to seek information about why he had been separated from the previous assignment and also to attempt to find another position through the temporary employment service. The temporary employer had notice of the claimant's availability because they notified him of the end of his assignment and because he went to the company offices immediately thereafter for the purpose of continuing in employment with the company in his present assignment and in the alternative inquiring about additional work that might be available to him at other assignments. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated August 15, 2015, reference 01, is affirmed. Claimant's separation from employment was attributable to the employer and after being separated from his most recent assignment, the claimant had adequate contact with the employer about his availability as required by the statute. Benefits are allowed, provided the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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