

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JASON P HAYES
Claimant

APPEAL NO. 19A-UI-00189-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA STAFFING INC
Employer

OC: 12/02/18
Claimant: Appellant (1R)

Iowa Code Section 96.5(1)(j) – Separation from Temporary Employment

STATEMENT OF THE CASE:

Jason Hayes filed a timely appeal from the January 2, 2019, reference 03, decision that held he was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that Mr. Hayes voluntarily quit on July 27, 2018 without good cause attributable to the employer. After due notice was issued, a hearing was held on January 24, 2019. Mr. Hayes participated. Laurie Simmons represented the employer and presented additional testimony through Ruth Castor. Exhibits 1 through 4 were received into evidence.

ISSUE:

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: Iowa Staffing, Inc. is a temporary employment agency. Claimant Jason Hayes established his employment with Iowa Staffing in May 2018. On May 15, 2018, Mr. Hayes and the employer signed a stand-alone policy that notified Mr. Hayes that he was required to contact the temporary employment agency within three working days of completing an assignment to request a new assignment or the employer would deem him to have voluntarily quit the employment. The policy warned that failure to make the required contact could affect Mr. Hayes' eligibility for unemployment insurance benefits. The employer provided Mr. Hayes with a copy of the policy statement he signed.

Mr. Hayes performed work for Iowa Staffing in a single, full-time, temp-to-hire assignment at Hydra Pools in Centerville. Mr. Hayes began the assignment on May 17, 2018 and last performed work in the assignment on July 24, 2018. Mr. Hayes' work hours were 7:00 a.m. to 3:30 p.m., Monday through Friday. Mr. Hayes was also required to perform overtime work as

needed. John Owens, Plant Manager, was Mr. Hayes supervisor at Hydra Pools. Ruth Castor, Office Manager, was Mr. Hayes' point of contact at Iowa Staffing.

Mr. Hayes last performed work in the Hydra Pools assignment on July 24, 2018. Mr. Owens contacted Ms. Castor on that day to end the assignment. Mr. Owens cited Mr. Hayes' attendance as the basis for ending the assignment. On July 2, 2018, Mr. Hayes was late for work for personal reasons. If Mr. Hayes needed to be late for or absent from work, Iowa Staffing's absence reporting policy required that Mr. Hayes notify both Iowa Staffing "as soon as possible" and also notify Hydra Pools. Ms. Castor reviewed the absence reporting policy with Mr. Hayes at the start of the Hydra Pools assignment. Mr. Hayes initialed to acknowledge both absence reporting requirements. The document Mr. Hayes initialed provided the number Mr. Hayes needed to call to report his absences to Hydra Pools. The document also provided the number for Iowa Staffing. Iowa Staffing maintains a 24-hour answering system on which employees may leave voicemail messages. Mr. Hayes had also been late for personal reasons on July 20, 2018.

On July 24, 2018, Ms. Castor spoke with Mr. Hayes by telephone to let him know that the assignment had ended and that he should not return to Hydra Pools for further work. During that contact, Mr. Hayes did not request another assignment through Iowa Staffing. Mr. Hayes did not make further contact with Iowa Staffing. On July 30, 2018, Iowa Staffing documented Mr. Hayes separation from the employment and documented that Mr. Hayes had not followed the call-in policy to indicate that he was available for another assignment.

REASONING AND CONCLUSIONS OF LAW:

The weight of the evidence establishes a non-disqualifying discharge from the temp-to-hire assignment followed by a voluntary separation from the temporary employment agency without good cause attributable to the temp agency.

The employer has the burden of proof on the discharge issue. 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 871 IAC 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).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See Iowa Administrative Code rule 871-24.32(7). The determination of whether absenteeism is excessive necessarily requires

consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See Iowa Administrative Code rule 871-24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Employers may not graft on additional requirements to what is an excused absence under the law. See *Gaborit v. Employment Appeal Board*, 743 N.W.2d 554 (Iowa Ct. App. 2007). For example, an employee's failure to provide a doctor's note in connection with an absence that was due to illness properly reported to the employer will not alter the fact that such an illness would be an excused absence under the law. *Gaborit*, 743 N.W.2d at 557.

Hydra Pools ended the assignment on July 24, 2018. due to attendance. The evidence in the record establishes unexcused absences on July 2 and 20, 2018, on which days Mr. Hayes was late for work for personal reasons. The employer presented insufficient evidence to establish other absences, including any other late arrivals, in connection with the assignment. The two unexcused tardies are insufficient to establish misconduct in connection with the assignment. Accordingly, the mere fact that the client business ended the assignment does not disqualify Mr. Hayes for unemployment insurance benefits.

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 employment's written end-of-assignment notice requirement complies with the requirements of Iowa Code section 96.5(1)(j). The employer reviewed the policy with Mr. Hayes at the start of the employment, had Mr. Hayes read and sign the policy, and provided Mr. Hayes with a copy of the policy document he signed. For these reasons, Iowa Code Section 96.5(1)(j) applied to Mr. Hayes' employment and he was obligated to contact the employer within three working days to request a new assignment or be deemed to have voluntarily quit and risk disqualification for unemployment insurance benefits. The weight of the evidence does not support Mr. Hayes' assertion that he requested a new assignment during the July 24, 2018 contact with Ms. Castor. The weight of the evidence supports Ms. Castor's testimony that Mr. Hayes did not request an additional assignment on July 24, 2018, when she notified him the Hydra Pools assignment had ended. Ms. Hayes created documentation relatively close in time to that contact that indicates Mr. Hayes did not request a new assignment. The administrative law judge found Ms. Castor's testimony and documentation on that matter to be more reliable than Mr. Hayes' recollection months later. The testimony of the parties is consistent regarding there being no contact between the parties following the July 24, 2018 telephone call.

Because the evidence in the record establishes that Mr. Hayes did not fulfill his obligation to contact the employer within three working days of the end of the assignment to request a new assignment, the administrative law judge concludes that Mr. Hayes separation from the temporary employment agency was a voluntary quit without good cause attributable to the temporary employment agency. The quit was effective July 27, 2018, the third day following the end of the work assignment. Mr. Hayes is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Hayes must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The January 2, 2019, reference 03, decision is affirmed. The claimant voluntarily quit without good cause attributable to the temporary employment agency. The quit was effective July 27, 2018, the third day following the end of the work assignment. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

This matter is remanded to the benefits for determination of whether the claimant has requalified for benefits since his July 27, 2018 disqualifying separation from Iowa Staffing, Inc.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs