IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

GREGORY LOUDERMILK Claimant **EXPRESS SERVICES INC** Employer	**APPEAL 22A-UI-01275-DH-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 04/25/21** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) - Voluntary Quitting
Iowa Code § 96.5(1)j - Voluntary Quitting - Temporary Employment
Iowa Code § 96.5(2)a - Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant/appellant, Gregory Loudermilk, filed an appeal from the December 8, 2021, (reference 02) unemployment insurance decision that denied benefits regarding his discharge from work on 10/29/21. After proper notice, a telephone hearing was conducted on February 4, 2022. Claimant participated personally. Employer/respondent, Express Services, Inc., did not participate. Judicial notice was taken of the administrative records.

ISSUE:

Was the separation a layoff, discharge for misconduct or a voluntarily quit without good cause? Did claimant make a timely request for another job assignment?

FINDINGS OF FACT:

Having heard the testimony and reviewed evidence and record, the administrative law judge finds:

Claimant's first day of working the assignment was either late September 2021 or the first week of October 2021. Claimant's last day worked was October 28, 2021. Claimant missed work on October 29, 2021 as when he was heading to work, he experienced a medical emergency and went to the emergency room for a non-work-related incident. Claimant texted his boss at his work assignment saying he was in the emergency room. The boss replied something to the extent he hoped everything was okay. Shortly thereafter, still on October 29, 2021, claimant received a call from employer (Express Services, Inc.) telling him that the temporary assignment boss called employer to say they no longer needed claimant's services, concerned about his health.

Employer failed to participate in the hearing. There is no evidence the employer: has a policy in compliance with Iowa Code § 96.5(1)j; notified claimant of said policy; provided claimant said policy; nor had claimant sign off on said policy.

The above job assignment was claimant's third job assignment from employer. Claimant was not provided a policy regarding requesting new assignments nor signed off on any such document.

Claimant was not provided any employee handbook from employer nor his job assignment. Claimant did not know he had to make a request for a new assignment and not being happy with the results from his last assignment, and how the employer handled it, he went to a different temporary employment firm for assignments.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether claimant's separation was a voluntary quit for failing to timely request a new assignment. The administrative law judge concludes it was not.

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 lettered paragraph:
>
> (a) "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.
>
> (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 § 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 § 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.

Since there is no evidence employer has a policy in compliance with Iowa Code § 96.5(1)j; or notified claimant of said policy; or provided claimant said policy; or had claimant sign off on said policy., the separation is not disqualifying.

The next issue is whether claimant's separation was a discharge for misconduct. The administrative law judge concludes it was not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (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." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.*

When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.,* 391 N.W.2d 731 (Iowa Ct. App. 1986).

Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Employer did not participate. Employer failed to meet their burden of proof. There is no evidence of any act being asserted as misconduct. No evidence that claimant had a handbook to establish expectations. No evidence that claimant was warned of any misconduct or knew that his job was in jeopardy. While the employer may have had good reasons to let claimant go, with there being no evidence to establish that reason and no disqualifying reason proven and no disqualification pursuant to Iowa Code § 96.5(2)a is imposed.

DECISION:

The December 8, 2021, (reference 02) unemployment insurance decision denying benefits is **REVERSED**. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Darrin T. Hamilton
Administrative Law Judge

April 1, 2022
Decision Dated and Mailed

dh/scn