IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

TAMEKA D ROGERS
Claimant

RANDSTAD US LLC
Employer

APPEAL NO. 19A-UI-00253-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 09/09/18
Claimant: Respondent (5)

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment
Iowa Code Section 96.5(2)(a) – Discharge

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 4, 2019, reference 06, decision that held the claimant was eligible for benefits provided she was otherwise eligible and that the employer's account could be charged for benefits, based on deputy's conclusion that Ms. Rogers' December 10, 2018 separation from the temporary employment firm was for good cause attributable to the employer. After due notice was issued, a hearing was held on January 25, 2019. Claimant Tameka Rogers did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Miranda Kulis, Market Manager, represented the employer. Exhibit 1 was received into evidence. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials, labeled D-1 through D-5, for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

ISSUES:

Whether Ms. Rogers was discharged from the work assignment for misconduct in connection with the employment.

Whether Ms. Rogers' 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: Randstad U.S., L.L.C. is a temporary employment agency. Claimant Tameka Rogers established her employment relationship with Randstad in September 2018 and at that time commenced a full-time, temp-to-hire work assignment at Dee Electronics. On September 13, 2018, Randstad had Ms. Rogers electronically sign an Employment Policies and Procedures document that set forth several Randstad policies. The following policy statement appears toward the bottom of first page of the small-font, single-spaced document:

When my assignment ends:

> I understand that:
>
> When an assignment ends, I must call my Randstad US, LLC office within three working days of completion of the assignment and then on a weekly basis to notify the Company that I am available for other assignments.
> Failure to do so may result in the termination of my employment with Randstad US, LLC, and may jeopardize my eligibility for unemployment benefits.
> If I turn down two or more positions that are comparable to jobs I've already worked, the refusal may jeopardize my eligibility for unemployment benefits.

The employer did not give Ms. Rogers a copy of the policy document she electronically signed.

Ms. Rogers last performed work in the Dee Electronics assignment on December 6, 2018. Ms. Roger's work hours in the assignment had been 7:30 a.m. to 4:00 p.m. On December 7, 2018, Ms. Rogers was absent from work without providing notice to Randstad. Randstad's attendance policy, contained in the same Employment Policies and Procedures document referenced above, required that Ms. Rogers notify Randstad at least 30 minutes prior to the scheduled start of her shift if she needed to be absent. That policy further stated that a first unexcused or no-call/no-show absence would prompt a "termination warning notice." The employer alleges additional absences, but lacks information concerning the alleged additional absences.

On the morning of December 7, 2018, Laurie Anderson, Randstad Market Manager, notified Ms. Rogers that the assignment was ended. Ms. Rogers did not make subsequent contact with Randstad to request a new work assignment.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge will first address whether the discharge from the assignment was for misconduct in connection with the employment.

Iowa Code section 96.5(2)a provides:

> 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.

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 a discharge matter. 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.

The discharge from the assignment was not based on misconduct in connection with the employment and would not disqualify Ms. Rogers for unemployment insurance benefits. Though the client business ended the assignment on December 7, 2018 for attendance, the evidence in the record establishes only a single unexcused absence on December 7, 2018, when Ms. Rogers was absent without notice. The employer presented insufficient evidence to prove any other absence dates.

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 evidence in the record establishes a December 7, 2018 separation from Randstad that was for good cause attributable to that employer. The employer's end-of-assignment notification requirement does not comply with the notice requirements set forth at Iowa Code section 96.5(1)(j). The policy statement is anything but clear and concise. The policy does not appear as a stand-alone policy document, but instead is tucked into a long list of policy statements. The policy statement fails to state that failure to contact the employer within three work days of completing an assignment would be deemed a voluntary quit. The employer further failed to comply with the notice requirements set forth in the statute by failing to given Ms. Rogers a copy of the document she signed. Merely making the document "available" online does not satisfy the statute. Because the employer's policy and conduct did not comply with the requirements set fort at Iowa Code section 96.5(1)(j), the statute does not apply to Ms. Rogers' employment and cannot be used as a basis for disqualifying Ms. Rogers for benefits. Rather, Ms. Rogers fulfilled the contract of hire by completing all of the work that Randstad and Dee Electronics had available for her in the work assignment. Because the employer did not comply with Iowa Code section 96.5(1)(j), Ms. Rogers was under no subsequent obligation to seek further assignments through Randstad. Ms. Rogers is eligible for benefits provided she meets all other eligibility requirements. The employer's account may be charged for benefits.

DECISION:

The January 4, 2019, reference 06, decision is modified as follows. The claimant was discharged from the temporary work assignment on December 7, 2018 for no disqualifying reason. The claimant's separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The separation was effective December 7, 2018. The claimant is eligible for benefits provided she meets all other eligibility requirements. The employer's account may be charged for benefits.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs