

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CYNTHIA R JANSSENS
Claimant

MIDWEST PROFESSIONAL STAFFING LLC
Employer

APPEAL NO. 15A-UI-01806-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/28/14
Claimant: Respondent (5)**

Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated February 2, 2015 reference 02, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on March 10, 2015. Claimant participated personally. Employer participated by Cyndi Mahlstadt and Barb Hooper. Claimant failed to respond to the hearing notice and did not participate. Employer's Exhibit One was admitted into evidence.

ISSUES:

Whether claimant is able and available for work?

Whether claimant is overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: As employer was the only participant in the hearing, all findings of fact are gleaned from employer's testimony. Claimant worked for employer's staffing agency filling in as needed with companies to which she would be assigned.

On or around December 12, 2014 employer called claimant on a late Friday afternoon telling of a job opportunity that was offered for the next Monday morning. Employer explained the job, where it was located, parking, and other matters to claimant. Employer normally sent out a confirmatory email in advance of an assignment beginning, but this assignment was a last minute assignment on a Friday afternoon for work that was to begin on Monday morning and employer's administrative staff was not able to get out that email until sometime after the assignment was to have begun.

Claimant received an email from employer on Monday morning, and responded back to that email shortly before 10:00 a.m. stating that she did not go to the assignment as she did not receive the email telling of the employer's address or company information. Claimant did acknowledge that there was a discussion on the phone on Friday afternoon though. As

claimant did not show for an assignment she had accepted, she was terminated from her employment with employer. Employer did not state a specific standard other than that employees are expected to show for job assignments, and if they do not then they will not continue to employ a claimant.

Although employer did not have the person testify who spoke with claimant on Friday afternoon, employer did supply Barb Hooper to testify. Ms. Hooper was seated right next to the person who spoke with claimant. Ms. Hooper heard the discussions as to the address of the law firm claimant was assigned to, and other details.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

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).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

There is little question that claimant is able and available for work. There was no indication that claimant was not available for benefits. The question before the court surrounds the communication on the assignment. Employer communicated the assignment to claimant on a late Friday afternoon by phone. Employer did not follow its ordinary procedures in sending an email detailing the job specifics. As this information was not forwarded to claimant, it is understandable that claimant might have had reservations about the specifics of the assignment.

Claimant did not refuse to accept an offer of suitable work as claimant did not receive the emails normally received. Claimant was in contact with employer soon after she was to show for her work, and expressed confusion. This confusion is understandable and does not create a situation where claimant has ended her employment relationship with employer. It was employer who chose to terminate the employment relationship because claimant did not show one time for a job assignment that she indicated she was not sure where it was.

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra. In contrast, 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 deemed misconduct within the meaning of the statute. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). Myers, 462 N.W.2d at 737. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." Bridgestone/Firestone, Inc. v. Emp't Appeal Bd., 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." Diggs v. Emp't Appeal Bd., 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning showing up for work. Claimant was not warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because employer did not show any intent on the part of claimant. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

As claimant is eligible to receive benefits, claimant has not been overpaid benefits in this matter.

DECISION:

The decision of the representative dated February 2, 2015, reference 02, is modified with no change in effect. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs