

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

SHAROCKIA A MCGUIRE

Claimant

APPEAL 23A-UI-01314-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC

Employer

OC: 01/15/23

Claimant: Appellant (2)

Iowa Code § 96.5(1)(j) – Temporary Employment Separation

Iowa Code § 96.5(2)(a) & (d) - Discharge

STATEMENT OF THE CASE:

On February 9, 2023, Sharockia McGuire (claimant) filed a timely appeal from the February 7, 2023 (reference 01) unemployment insurance decision that disqualified the claimant for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion the claimant voluntarily quit on January 13, 2023 without good cause attributable to the employer. After due notice was issued, a hearing was held on February 24, 2023. Claimant participated. Jessica Segner represented the employer and presented additional testimony through Melissa Hawkins. Exhibits 1, 2, 3 and A were received into evidence.

ISSUES:

Whether the claimant was discharged from the Alfa Gomma assignment for misconduct in connection with the assignment.

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:

Sharockia McGuire (claimant) established her employment with QPS Employment Group, Inc. in June 2022. QPS is a temporary employment firm. During the onboarding process, the employer had the claimant electronically sign to acknowledge multiple online policy documents, including a 3-Day Reassignment Policy. The policy provided as follows:

Once you complete an assignment with a client, it is your duty to contact QPS for reassignment within three (3) working days as required by Iowa Code Section 96.5-1-j. Failure to report within three (3) days for reassignment without reasonable cause will indicate that you have quit working for QPS Employment Group. Furthermore, failure to seek reassignment may result in disqualification for unemployment benefits pursuant to Iowa Code Section 96.5-1-jt.

My signature below means that I understand and have received a copy of the above policy.

After the claimant signed to acknowledge the 3-Day Reassignment Policy, the employer provided the claimant with an unsigned copy of the policy form. The policy document the employer provided to the claimant did not include any other policies.

On June 20, 2022, the claimant began a full-time, temp-to-hire work assignment at Alfa Gomma in Burlington. The claimant has at all relevant times resided in Burlington. The assignment paid \$14.00 an hour. The claimant worked a Monday through Saturday schedule at Alfa Gomma. The work hours were 7:00 a.m. to 3:30 p.m. Monday through Friday and 5:00 a.m. to 1:00 p.m. on Saturday. The claimant used her personal vehicle to get to and from the assignment at Alfa Gomma. The claimant asserts her personal vehicle was not sufficiently reliable for longer distance travel.

The claimant last performed work in the Alfa Gomma assignment on January 12, 2023. Alfa Gomma ended the assignment on that day. When an Alfa Gomma human resources representative notified QPS of the decision to end the assignment, the Alfa Gomma representative alleged the claimant had on January 11, 2023 spoken rudely to coworkers and used profanity. The Alfa Gomma representative did not state what the claimant had allegedly said. QPS did not investigate the Alfa Gomma allegation. In October 2022, QPS addressed with the claimant an incident wherein the claimant directed offensive comments to coworker at Alfa Gomma.

On January 12, 2023, QPS notified the claimant that the Alfa Gomma assignment had ended. The discussion quickly turned to discussion of a Smithfield assignment that was available in Monmouth, Illinois. The expressed interest in the Smithfield assignment, though the 30-plus mile commute presented a challenge. QPS provides transportation from Burlington to the workplace in Monmouth for QPS employees assigned to the second shift, but does not provide similar transportation to first shift workers. The first shift hours are 6:00 a.m. to 2:30 p.m. The second shift hours are 2:45 p.m. to midnight. The Smithfield workdays would be Monday through Friday with the potential for Saturday work. The Smithfield pay would be \$19.00 for the first shift and \$19.50 for the second shift. The claimant does not recall the employer mentioning employer-provided transportation or having a choice between first and second shift. The claimant understood the available shift to be the first shift. The claimant was under the belief that she had to find her own transportation to the assignment regardless of the shift. The claimant looked into a car-pooling arrangement, but did not secure transportation to the assignment in Monmouth, Illinois.

At the same time, the claimant was discussing the Smithfield assignment with the employer on January 12 and 13, 2023, the claimant also expressed interest in possible assignments in Burlington, but the employer did not have an assignment available for the claimant in Burlington. When the discussion about the Smithfield assignment fell through due to the claimant's lack of transportation to that proposed assignment, the claimant separated from QPS.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge will first address the termination of the temp-to-hire work assignment.

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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.

...

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

...

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...

(6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.

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 Legislature recently codified the misconduct definition along with a list of types of disqualifying misconduct. See Iowa Code section 96.5(2)(d).

The employer has the burden of proof when it comes to allegation of misconduct. 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 Iowa Admin. Code r.871 -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).

An employer has the right to expect decency and civility from its employees and an employee’s use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification for unemployment benefits. *Warrell v. Iowa Dept. of Job Service*, 356 N.W.2d 587 (Iowa Ct. App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior’s authority. *Deever v. Hawkeye Window Cleaning, Inc.*, 447 N.W.2d 418 (Iowa Ct. App. 1989).

The employer presented insufficient evidence to prove that Alfa Gomma’s decision to terminate the assignment on January 12, 2023 was based on misconduct in connection with the assignment. The allegation of a January 11, 2023 incident of the claimant speaking rudely and using profanity does not rise above mere allegation. The employer does not know what the claimant allegedly said. The employer did not investigate the allegation. The employer did not present testimony from any with personal and/or meaningful knowledge of the particulars pertaining to the alleged January 11, 2023 incident. The evidence fails to establish a current act of misconduct that led to termination of the assignment. The October 2022 was not a “current” matter at the time the assignment ended.

The administrative law judge will now address the separation from the temporary employment firm.

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.

Iowa Admin. Code r. 871-24.26(1) 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:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. *Id.* An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See *Olson v. Employment Appeal Board*, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The evidence in the record established a January 12, 2023 separation that was with good cause attributable to the employer. The employer's 3-Day Reassignment Policy complied with the statute. The employer substantially satisfied the notice requirements by having the claimant electronically sign to acknowledge the policy and by giving the claimant a copy of the policy as a stand-alone document. The claimant completed the Alfa Gomma assignment on January 12, 2023. On that same day, the employer notified the claimant the assignment was ended. On that same day, the claimant engaged with the employer in discussion about other prospective assignments, including a possible assignment in Burlington and the Smithfield assignment in Monmouth, Illinois. At the time, the employer did not have an assignment for the claimant in Burlington. The commuting distance to the Smithfield assignment, and the claimant's inability to secure suitable transportation to Monmouth, Illinois ended that discussion. The Smithfield assignment involved substantial changes in the conditions of the employment. The claimant was not obligated to accept an assignment 30-plus miles from her home, regardless of who was responsible for transportation. The claimant had not previously performed work for the employer outside of Burlington. The claimant would have to find her own transportation to the Smithfield plant, if she desired to retain work hours similar to those she had worked for the employer up to that point. The claimant was not obligated to acquiesce in a change of shift, which would also constitute a substantial change in the conditions of the employment. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The February 7, 2023 (reference 01) is REVERSED. The claimant's January 12, 2023 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits provided she is otherwise eligible. The employer's account may be charged for benefits.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style. It is positioned above a horizontal line.

James E. Timberland
Administrative Law Judge

February 28, 2023
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.