

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUANA N ARCEO
Claimant

APPEAL NO. 14A-UI-11279-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 09/28/14
Claimant: Respondent (1)

Section 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Advance Services, Inc. filed a timely appeal from a representative's decision dated October 29, 2014 (reference 01) which held claimant eligible to receive unemployment insurance benefits, finding that the claimant was dismissed from work under non-disqualifying conditions. After due notice was provided, a telephone hearing was held on November 19, 2014. Claimant participated. The employer participated by Mr. Michael Payne, Risk Manager. Official interpreter was Mr. Ike Rocha. Employer's Exhibit Two was admitted into evidence.

ISSUE:

At issue is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Juana Arceo was employed by Advance Services, Inc. beginning on August 30, 2010. Ms. Arceo was most recently assigned to work at a client, employer location on September 2, 2014 and worked until September 12, 2014 when the assignment ended and the claimant was informed by a representative of Advance Services, Inc. that she would not be employed in the future by Advance Services, Inc. because of her "record."

Ms. Arceo had been assigned to work at the Sygenta Seed Company as an agricultural laborer and at the conclusion of the assignment, the claimant and other workers began submitting papers indicating their desire for additional assignments through Advance Services, Inc. Ms. Arceo was stopped from submitting her paperwork into the box where they were being deposited. The claimant was told at that time that there would be no more jobs for her; she would no longer be employed by Advance Services, Inc.

Based upon the statements made to her by a representative of Advance Services, Inc.; Ms. Arceo reasonably concluded that she had in fact been terminated from her employment with Advance Services, Inc. and did not further attempt to contact Advance Services, Inc. within the next three working days for additional assignments for that reason.

It is the employer's position that the claimant's failure to notify the employer of her availability for additional job assignments at the completion of her most recent assignment on September 12, 2014 violated the terms of an agreement that the claimant had signed and constituted a voluntary quit of employment.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes, based upon the testimony in the record, that Ms. Arceo was discharged by the employer when an employer representative specifically told the claimant that she would not be hired for any additional assignment and was no longer employed by Advance Services, Inc. because of her "record" with the company. The administrative law judge finds the claimant's testimony to be credible and the claimant's first-hand sworn testimony carries more weight than the hearsay evidence offered by the employer on this issue.

The next question becomes whether the evidence in the record establishes misconduct sufficient to warrant the denial of unemployment insurance benefits. It does not.

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).

In discharge cases, the employer bears the burden of proof to establish disqualifying job misconduct on the part of the claimant. 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. of Appeals 1992).

In the case at hand, the claimant had no obligation to re-contact Advance Services, Inc. for additional assignments following her job separation on September 12, 2014. Based upon statements made by the claimant's immediate supervisor, who was a direct employee of Advance Services, Inc., the claimant reasonably concluded that she had been discharged from employment and would not be eligible to be reassigned by Advance Services, Inc. for that reason.

The evidence in the record is devoid of any evidence establishing intentional misconduct on the part of Ms. Arceo. The administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant's discharge from employment took place under disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated October 29, 2014 (reference 01) is affirmed. The claimant was discharged under non-disqualifying conditions. Unemployment insurance benefits are allowed, providing the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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