

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CANDY F BANKS

Claimant

APPEAL NO. 14A-UI-04817-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 03/30/14

Claimant: Appellant (2)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 1, 2014, reference 01, that concluded she was discharged for work-connected misconduct. A telephone hearing was held on May 29, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Steve Volle participated in the hearing on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Was the claimant discharged for work-connected misconduct?

FINDINGS OF FACT:

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer on an assignment as a general laborer at Pioneer from September 10, 2012, to March 26, 2014.

On January 13, 2014, the claimant was warned in writing about tardiness and returning late from breaks. After receiving the warning, the claimant missed 1.5 days because she left work early due to legitimate illness and then was absent for that reason the next day. She also missed three days due to winter weather and bad road conditions with notice to the employer.

On March 24, 2014, the employer's office manager, Steffi Gursky informed the claimant and several other temporary employees that they were being laid off due to lack of work effective March 26. The claimant was not late coming back from lunch on March 24, 25, or 26. The claimant was never told that she was being discharged due to absenteeism and contacted the employer afterward for other assignments.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code § 96.5-1 and 96.5-2-a. On the other hand, a claimant whose

separation is a layoff is qualified to receive benefits, if the claimant is otherwise eligible. The rules define a layoff as "a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations." 871 IAC 24.1(113)a.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. The claimant testified credibly about what happened when her employment ended in March 2014. The employer did not have a witness with personal knowledge about what happened. The claimant's testimony outweighs the evidence from the employer in this case. As a result, the preponderance of the evidence establishes the claimant was laid off due to lack of work. Even if the separation was considered a discharge, no willful and substantial misconduct has been proven in this case. The past attendance issues after the January warning were for legitimate reasons and properly reported. The preponderance of the evidence establishes the claimant was not 30 minutes late from lunch on March 25 as alleged by the employer.

DECISION:

The unemployment insurance decision dated May 1, 2014, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css