

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CORINA P CAMPBELL
Claimant

APPEAL NO. 16A-UI-04188-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VOLT MANAGEMENT CORP
Employer

OC: 05/10/15
Claimant: Appellant (2/R)

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

STATEMENT OF THE CASE:

Corina Campbell filed a timely appeal from the April 6, 2016, reference 04, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an Agency conclusion that Ms. Campbell had voluntarily quit on March 14, 2016 without good cause attributable to the employer by failing to contact the temporary employment firm within three days of the completing an assignment . After due notice was issued, a hearing was held on May 5, 2016. Ms. Campbell participated. Amanda Clark, Administrator and Industrial Recruiter, represented the employer.

ISSUE:

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: Volt Management Corporation is a temporary employment agency. Corina Campbell performed work for Volt in a single full-time temp-to-hire assignment. The assignment was at Plastic Products in West Branch. Ms. Campbell started the assignment in November 2015 and last performed work in the assignment on March 14, 2016. At that time, the Plastic Products ended the assignment based on Ms. Campbell's alleged theft of another worker's cell phone. A Plastic Products supervisor escorted Ms. Campbell out of the workplace. Initially, neither Plastic Products nor Ms. Campbell made contact with Volt to let the temporary employment agency know that Ms. Campbell had separated from the employment. On March 16, 2016, Ms. Campbell was involuntarily committed for heroin abuse/dependence. On March 18, Ms. Campbell entered inpatient treatment. On March 28, 2016, Ms. Campbell was discharged from inpatient treatment. On March 29, 2016, Ms. Campbell made contact with Volt to inquire about a new assignment. Volt did not document that contact. On April 11, 2016, Volt learned from Plastic Products that Ms. Campbell had been discharged from the assignment on March 14, 2016 and received a copy of a Plastic Products internal memo from March 15, 2016 regarding the discharge. Volt did not do any independent investigation of the alleged theft.

At the time of hire, Volt Management Corporation provided Ms. Campbell with an employee handbook. However, Volt did not have Ms. Campbell sign a separate policy statement about contacting the temporary employment agency upon completing an assignment and did not provide Ms. Campbell with a copy of any such separate policy statement.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge will first address Ms. Campbell's March 14, 2016 discharge from the assignment.

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).

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). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer presented insufficient evidence, and insufficiently direct and satisfactory evidence, to prove by a preponderance of the evidence that Ms. Campbell committed the alleged theft. The employer did not conduct any independent investigation of that matter. The employer did not present testimony from anyone with personal knowledge of the matter. Accordingly, the March 14, 2016 discharge from the assignment would not disqualify Ms. Campbell for unemployment insurance benefits.

The administrative law judge will next address Ms. Campbell's separation from the actual employer, Volt Management Corporation.

Iowa Code § 96.5(1)j provides:

An individual shall be disqualified for benefits:

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. 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.

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.

For the purposes of this paragraph:

(1) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(2) "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 indicates that the employer did not have an end-of-assignment policy that complied with the requirements of Iowa Code section 96.5(1)(j). The employer did not comply with the statutory requirement of having Ms. Campbell sign a separate policy statement or the requirement that the employer provided Ms. Campbell with a copy of the separate policy statement. For those reasons, Ms. Campbell's obligation to the temporary employment agency ended when she completed the Plastic Products assignment on March 14, 2016. Ms. Campbell's decision to delay further contact with Volt, or a decision not to make further contact with the temporary employment agency, would not disqualify Ms. Campbell for benefits or relieve the employer of liability for benefits.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Campbell's March 2016 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. Ms. Campbell is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

This matter will be remanded to the Benefits Bureau for determination of whether Ms. Campbell has been able to work and available for work since she established her claim for benefits.

DECISION:

The April 6, 2016, reference 04, decision is reversed. The claimant's March 2016 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 paid to the claimant.

This matter is remanded to the Benefits Bureau for determination of whether the claimant has been able to work and available for work since she established her claim for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs