IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

SHAWN WEST
Claimant

PEOPLEREADY INC
Employer

APPEAL NO. 19A-UI-06429-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 07/21/19
Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Shawn West filed a timely appeal from the August 12, 2019, reference 02, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. West separated from the employer on July 25, 2019 without good cause attributable to the temporary employment firm. After due notice was issued, a hearing was held on September 5, 2019. Mr. West participated. Ashley Malloy represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 19A-UI-06430-JTT. The administrative law judge took official notice of Mr. West's weekly claims (KCCO).

ISSUES:

Whether Mr. West voluntarily quit the employment without good cause attributable to the employer.

Whether Mr. West was suspended and/or discharged from the employment for misconduct in connection with the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: PeopleReady, Inc. is a temporary employment agency that provides day-labor work assignments to its employees. Shawn West commenced getting work through PeopleReady in 2017 and most recently worked for the employer in a series of day-labor assignments at Trail Winds, an apartment complex in Iowa City. Mr. West has at all relevant times resided in Hiawatha and almost all of his work assignments through PeopleReady have been in the Cedar Rapids area. Mr. West lacks a driver's license and uses public transit as his primary source of transportation. Mr. West accepted the Iowa City assignment based on the higher than usual pay and based on his ability to get a ride from a coworker to the assignment in Iowa City. There was no agreement for the employer to provide Mr. West with transportation to the assignment, but the employer had assisted with facilitating Mr. West's ride with the coworker. The employer told Mr. West the employer expected to have work at Trail Winds for two weeks. At the end of each day, the client business would decide whether it wished to have Mr. West return the

following day. Mr. West worked his first day-labor assignment at the Iowa City location on Friday, July 19, 2019. Mr. West returned for a second day-labor assignment on Saturday, July 20, 2019. At the time Mr. West finished his work day on July 20, 2019, he was under the belief that work on Sunday, July 21, 2019 was optional, but that he was expected to return to the assignment on Monday, July 22, 2019. Mr. West did not appear for work in the Iowa City assignment on Sunday, July 21, 2019. The coworker did not show to collect Mr. West and public transit was not available to get Mr. West to the assignment.

Mr. West last performed work for PeopleReady on Monday, July 22, 2019. On that day, Mr. West secured a bus ride from the Cedar Rapids area to the Iowa City work assignment. On that morning, a PeopleReady representative told Mr. West that he could finish out his work day, but that he would then be suspended from further day-labor assignments for two weeks, based on his failure to appear for the day-labor assignment on Sunday, July 21, 2019.

Once the suspension went into place, there was no further contact between the parties. The employer did not contact Mr. West to offer additional work. Mr. West did not contact PeopleReady for further assignments.

To start the employment in 2017, Mr. West had to complete an online application and acknowledge online material that included several employer policies. The employer did nothing to ensure that Mr. West read or understood the policies. The employer did not provide Mr. West and hardcopy documentation of what he had "electronically signed."

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. Iowa Administrative Code rule 871-24.1(113)(c). A quit is a separation initiated by the employee. Iowa Administrative Code rule 871-24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. *See Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See Iowa Administrative Code rule 871-24.25.

Iowa Administrative Code rule 871-24.32(9) provides as follows:

> Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

Iowa Code section 96.5(2)(a) provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 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.

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 weight of the evidence in the record establishes that the employer discharged Mr. West from the employment, when the employer suspended him on July 22, 2019. Mr. West had given no indication of an intention not to return for further work assignments. On the contrary, Mr. West had taken extraordinary measures on July 22, 2019 to get from his home in Cedar Rapids to the assignment in Iowa City. The employer's decision to suspend Mr. West effectively barred him from returning for any of the additional day-labor assignments at the Iowa City location and barred Mr. West from getting any other work with the employer for at least two weeks. Even though it was the employer who initiated the separation from the employment under the purported suspension, the employer did not offer additional assignments to Mr. West.

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).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See Iowa Administrative Code rule 871-24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See Iowa Administrative Code rule 871-24.32(8). Absences related to issues of personal

responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Employers may not graft on additional requirements to what is an excused absence under the law. See *Gaborit v. Employment Appeal Board*, 743 N.W.2d 554 (Iowa Ct. App. 2007). For example, an employee's failure to provide a doctor's note in connection with an absence that was due to illness properly reported to the employer will not alter the fact that such an illness would be an excused absence under the law. *Gaborit*, 743 N.W.2d at 557.

Allegations of misconduct 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).

The employer's decision to suspend and effectively discharge Mr. West from the employment was not based on misconduct in connection with the employment. The employer's decision to suspend and effectively discharge Mr. West from the employment was based on a single absence on Sunday, July 21, 2019. The employer presented insufficient evidence to rebut Mr. West's testimony that the Sunday work was supposed to be optional. In any event, this single absence, even if unexcused, would not be sufficient to establish *excessive unexcused* absences and would not constitute misconduct in connection with the employment.

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 Code Section 96.5(1)(j) does not apply to this employment or to this employment separation. There was no voluntary quit. Mr. West completed the most recent assignment the employer had for him on July 22, 2019 and fully intended to report for additional day-labor assignments in the days that followed. The employer prevented him from doing that. Even if Mr. West had elected not to appear for additional assignments following July 22, 2019, the separation would have been for good cause attributable to the employer. Because the employer did not comply with the notice requirements set forth in Iowa Code section 96.5(1)(j)(2), the statute does not apply to Mr. West's employment or employment separation. Even if Mr. West had voluntarily separated from the employment following the day-labor assignment on July 22, 2019, he had fulfilled his contract of hire by completing the day-labor assignment and was under no obligation to seek further assignments through PeopleReady.

The July 22, 2019 suspension and effective discharge did not disqualify Mr. West for unemployment insurance benefits. The separation from PeopleReady effective that day was for good cause attributable to the temporary employment firm. Mr. West is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The August 12, 2019, reference 02, decision is reversed. The claimant was discharged on July 22, 2019 for no disqualifying reason. The claimant's separation from the temporary employment firm on July 22, 2019 was for good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs