

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT T GENAW
Claimant

SEDONA STAFFING INC
Employer

APPEAL 20A-UI-07914-BH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Respondent (1)

Iowa Code section 96.5(1) – Voluntary Quit
Iowa Code section 96.5(1)(j) – Temporary Employees
Iowa Administrative Code rule 871-24.25 – Voluntary Quit Without Good Cause Attributable to the Employer
Iowa Administrative Code rule 871-24.26 – Voluntary Quit With Good Cause Attributable to the Employer
Iowa Code section 96.3(7) – Overpayment of Benefits
Iowa Administrative Code rule 871-24.10 – Overpayment of Benefits
Federal Public Law No. 116-136 section 2104(B) – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

The employer, Sedona Staffing, Inc. (Sedona), appealed the July 17, 2020 (reference 04) unemployment insurance decision that found the claimant, Robert T. Genaw, was eligible for regular unemployment insurance benefits. The agency issued due notice to the parties. The undersigned presided over a telephone hearing on August 17, 2020. Sedona participated through unemployment insurance benefits administrator Colleen McGuinty, who testified. Employer's Exhibit 1 was admitted into evidence.

ISSUES:

Was Genaw's separation from employment with Sedona a layoff, discharge for misconduct, or voluntary quit without good cause attributable to the employer?

Did the agency overpay Genaw benefits?

Does Genaw have to repay benefits?

Should Sedona be charged for Genaw's benefits?

Is Genaw eligible for FPUC?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the undersigned finds the following facts.

Sedona is a staffing firm. Its employees work temporary assignments at client businesses. Genaw was one such employee.

Sedona has a written policy that states:

According to the policies of Sedona Staffing, an employee must, upon completion of an assignment, contact Sedona Staffing and request placement on a new assignment. If such contact is not made within three working days of completion of the last assignment, Sedona Staffing will consider the employee to have voluntarily quit employment and further assignments may not be offered. In addition, if a claim for unemployment benefits is filed, this failure to contact Sedona Staffing may affect the employee's benefit eligibility.

Sedona provided Genaw a copy of this policy. He signed the policy, acknowledging he received and read the policy.

Most recently, Genaw worked an assignment in March of 2020. The assignment ended on March 3, 2020. Sedona's client ended Genaw's assignment due to lack of work. The evidence establishes Sedona knew Genaw's assignment ended on March 3, 2020. Sedona ended Genaw's employment because he did not request a new assignment within three days of its client terminating Genaw's assignment on March 3, 2020. Genaw's discharge took effect on March 6, 2020.

REASONING AND CONCLUSIONS OF LAW:

Iowa is an at-will employment state, which means that an employer has the right to discharge an employee for any reason (so long as doing so does not violate a statute or undermine a public policy) or no reason at all. Consequently, this decision does not consider whether Sedona was in the right when it discharged Genaw. Rather, the question this decision answers is whether the reason for Sedona's decision to discharge Genaw disqualifies him from unemployment insurance benefits under the Iowa Employment Security Law, Iowa Code chapter 96.

When the legislature created Iowa's unemployment insurance system, it codified a "guide for interpretation" for agencies such as Iowa Workforce Development and the Department of Inspections and Appeals, as well as the courts, in Iowa Code section 96.5(2), which states:

As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and the worker's family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and

limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own.

Stare decisis is a bedrock principle of American law that applies to the agency the same as Iowa courts. Consequently, Iowa Supreme Court precedent on the effect of section 96.2 when interpreting the statute controls in this appeal. The court has articulated the following standard when interpreting chapter 96:

We are to construe the provisions of that law liberally to carry out its humane and beneficial purpose. *Dirksen v. Employment Appeal Bd.*, 477 N.W.2d 381, 382 (Iowa 1991). Conversely, we are to interpret strictly the law's disqualification provisions, again with a view to further the purpose of the law. See *Diggs v. Employment Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa App.1991). The approach we take is faithful to the underlying purpose of the law and the principles we follow in interpreting it.

Bridgestone/Firestone, Inc. v. Employment Appeal Bd., 570 N.W.2d 85, 96 (Iowa 1997).

The disqualification provision here is Iowa Code section 96.5(1)(j), which provides for the disqualification of “temporary employees,” as defined by statute, under certain circumstances that create a voluntary quit by law. Under Iowa Code section 96.5(1) an individual is disqualified from benefits if the individual left work voluntarily without good cause attributable to the employer. Section 96.5(1)(j) governs claims where the claimant was a temporary employee working for a temporary staffing firm. This decision must therefore determine whether Johnson was a temporary employee and whether ELS was a temporary employment firm under the statute.

Under Iowa Code section 96.5(1)(j)(3)(a), a temporary employee is “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.” Under section 96.5(1)(j)(3)(b), a temporary employment firm is “a person engaged in the business of employing temporary employees. Here, there is no dispute that Genaw was a temporary employee or that Sedona was a temporary employment firm under the statute. Iowa Code section 96.5(1)(j) therefore applies.

Under section 96.5(1)(j), an individual who worked as a temporary employee for a temporary employment firm is not disqualified from benefits if the agency finds that:

(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.

The Iowa Supreme Court has recognized the statute requires a temporary employee to do two things:

- 1) Notify the temporary employment firm of the completion of the assignment within three days of its conclusion; and
- 2) Request a new assignment within a reasonable amount of time. *Sladek v. Employment Appeal Bd.*, 939 N.W.2d 632, 638–39 (Iowa 2020).

While the court refused to announce a rule for when a request for reassignment is timely made under section 96.5(1)(j)(1), it held that such a request made five weeks after the end of the individual's previous assignment is too late. *Id.* 640–41.

Here, Sedona has created a policy that provides for an employee's discharge if the employee fails to meet Sedona's requirement for requesting a new assignment. If the employee does not meet Sedona's standard of requesting a new assignment, Sedona discharges the employee and labels the discharge a "voluntary quit." Sedona argues on appeal that Genaw quit because his actions meet the definition of a "voluntary quit" under Sedona's policy.

Sedona is free to define "voluntary quit" how it likes for its policies. That is an employer's prerogative. However, Sedona's policy does not control in this appeal. Iowa Code section 96.5(1)(j) does. And the text of Iowa Code section 96.5(1)(j) does not deem an employee to have quit if the employee does not request a new assignment within three days of the conclusion of the employee's most recent assignment. The English language cannot be contorted in such a way.

Consequently, the evidence establishes it is more likely than not Sedona discharged Genaw on March 6, 2020, and labeled the discharge a "voluntary quit." The reason Sedona discharged Genaw is that he did not request a new assignment within three days of an assignment ending. This decision must therefore determine whether Genaw's actions constitute disqualifying misconduct under the law.

Under Iowa Code section 96.5(2)(a), an individual is disqualified for benefits if the employer discharges the individual for misconduct in connection with the individual's employment. The statute does not define "misconduct." But Iowa Administrative Code rule 871-24.32(1)(a) does:

"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.

The Iowa Supreme Court has ruled this definition accurately reflects the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Administrative Code rule 871-24.32(4) states:

The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Under Iowa Administrative Code rule 871-24.32(8),

While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

In the current appeal, Sedona has failed to meet its burden of proof to show misconduct. Genaw was not scheduled to work, so his was not absent in the traditional sense. Further, there is no evidence that Sedona had any work for Genaw if he had called in. For these reasons, the evidence establishes Sedona discharged Genaw on March 6, 2020, for no disqualifying reasons. Benefits are allowed. Because Genaw is entitled to benefits under Iowa law, the other issues are moot.

DECISION:

The July 17, 2020 (reference 04) unemployment insurance decision is affirmed. Sedona discharged Genaw for no disqualifying reason. Benefits are allowed, provided Genaw is otherwise eligible.

A handwritten signature in black ink, appearing to read "Ben Humphrey", with a stylized flourish extending from the end.

Ben Humphrey
Administrative Law Judge

November 2, 2020
Decision Dated and Mailed

bh/sam