

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MONDA K HALL
Claimant

APPEAL NO. 09A-UI-08713-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPHERION ATLANTIC ENTERPRISES LLC
Employer

OC: 04/19/09
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 8, 2009, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 2, 2009. Claimant Monda Hall participated. Leatha Hamilton, Client Services Manager, represented the employer.

ISSUE:

Whether Ms. Hall voluntarily quit or was discharged from the employment. The administrative law judge concludes that Ms. Hall was discharged.

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. Monda Hall established her relationship with Spherion Atlantic Enterprises on April 26, 2007. Ms. Hall worked in one full-time, long-term assignment at U.P.S. Ms. Hall's title was Billing Associate. Ms. Hall's work hours were 8:00 a.m. to 4:30 p.m., Monday through Friday. Ms. Hall started the assignment on April 27, 2007. The assignment was scheduled to end on April 27, 2009. Ms. Hall last performed work in the assignment on April 16, 2009.

Ms. Hall could earn a \$250.00 attendance bonus if she worked 500 hour per calendar quarter at U.P.S. and was absent no more than two days during the quarter. On April 16, 2009, Ms. Hall reviewed her payroll information to see whether her bonus for the first quarter of 2009 had issued. Ms. Hall did not see the bonus amount. Ms. Hall spoke to a coworker and learned that others had received their attendance bonus. Ms. Hall contacted Jana Eggly at Spherion and asked if U.P.S. had turned in her time so that her bonus eligibility could be determined. Ms. Eggly told Ms. Hall that U.P.S. had reported 480 hours for Ms. Hall for the first quarter of 2009. Ms. Eggly told Ms. Hall that she would need to speak with U.P.S. Building Site Supervisor Kathy Russell to resolve issues relating to the quarterly bonus. Ms. Russell functioned as Ms. Hall's immediate supervisor in the U.P.S. assignment.

Ms. Hall gathered records of the time she had worked during the first quarter and went to speak with Ms. Russell. The documents Ms. Hall collected indicated she had actually worked 496 hours. In addition, Ms. Hall determined she should receive credit for the New Year's Day holiday and another eight hours of holiday credit. By Ms. Hall's calculation, she should have been credited with 512 hours for the quarter, which would qualify her for the bonus.

Ms. Hall told Ms. Russell there must have been a mistake in determining her work hours for the quarter and asserted she had worked sufficient hours to qualify for the bonus. Ms. Russell indicated there had been no mistake, that Ms. Russell had calculated the hours, and that Ms. Hall had not worked sufficient hours to qualify for the bonus. When Ms. Russell did not respond favorably, Ms. Hall returned to her desk. Ms. Hall began to gather up the necessary documentation so that she could address the bonus pay issue with her actual employer, Spherion Atlantic Enterprises. Ms. Hall received an e-mail message from Ms. Russell, who wrote that she did not appreciate Ms. Hall's attitude.

Ms. Hall decided to leave the workplace before the end of her shift so that she could go speak with Spherion about the bonus pay issue. If Ms. Hall waited until the end of her shift at 4:30 p.m., she would not arrive at Spherion before Spherion closed at 5:00 p.m. Ms. Hall arrived at Spherion at 12:30 p.m. and left Spherion at 1:00 p.m. Ms. Eggly agreed to look over Ms. Hall's documentation and get back to her. Ms. Hall did not return to U.P.S. to complete her shift.

On April 17, Ms. Hall reported for her assignment at U.P.S. Ms. Russell met with Ms. Hall and told her that U.P.S. had decided to end the assignment. Ms. Russell considered Ms. Hall's early departure on April 16 "walking off the job." After Ms. Hall left U.P.S. she went to Workforce Development to establish a claim for unemployment insurance benefits. Ms. Hall then took her updated resume to Spherion. Spherion Client Service Manager Leatha Hamilton concluded that Ms. Hall had engaged in misconduct by leave U.P.S. early on April 16. Ms. Hamilton notified Ms. Hall that Spherion would not place her in any additional assignments.

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. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 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 871 IAC 24.25.

The weight of the evidence in the record indicates that Ms. Hall did not intend to end her work in the U.P.S. assignment at the time she left work early on April 16. Nor did Ms. Hall intend to sever her employment relationship with Spherion. The weight of the evidence fails to establish a voluntary quit and establishes a discharge instead.

Iowa Code section 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.

871 IAC 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.

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).

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).

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 871 IAC 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 871 IAC 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).

The evidence in the record establishes a single, isolated early departure from the work assignment. The unauthorized early departure was an unexcused absence, but nothing more than that. A single unexcused absence is not misconduct. See Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989).

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Hall was discharged for no disqualifying reason. Accordingly, Ms. Hall is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Hall.

DECISION:

The Agency representative's June 8, 2009, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs