

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

Kudeja Kelly
Claimant

Trade Team, LLC
Employer

APPEAL 20A-UI-08238-BH-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Respondent (1)

Iowa Code section 96.5(1) – Voluntary Quit

Iowa Administrative Code rule 871-24.25 – Voluntary Quit Without Good Cause

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

Iowa Administrative Code rule 871-24.32(1)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Kudeja Kelly appealed the July 6, 2020 (reference 01) unemployment insurance decision that denied benefits. The agency properly notified the parties of the hearing. The undersigned presided over a telephone hearing on August 26, 2020. Kelly participated personally and testified. Trade Team, LLC (Trade Team) participated through Teresa Seymour, who testified.

ISSUE:

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

Did Trade Team discharge Kelly for job-related misconduct?

Was Kelly overpaid benefits?

Is Kelly eligible for Federal Pandemic Unemployment Compensation (FPUC)?

FINDINGS OF FACT:

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

Trade Team is a temporary staffing agency. Trade Team assigns its employees, who have trade skills such as welding, to work for client businesses. Trade Team hired Kelly as a

temporary employee on October 14, 2019. Kelly worked full time as a welder. Trade Team discharge Kelly effective March 24, 2020.

Seymour was the only witness to testify on behalf of Trade Team. She did not supervise Kelly. Seymour did not work with the client company where Trade Team assigned Kelly. Seymour and Kelly had no interaction before the hearing. Seymour had no firsthand knowledge of the events surrounding Trade Team's discharge of Kelly.

Trade Team provided Kelly with a copy of its employee handbook upon hiring her. Kelly signed an acknowledgment of receipt on October 14, 2019. Trade Team has a policy regarding disciplinary action. It includes a list of examples of the types of actions that "may result in disciplinary action, up to and including immediate termination." One of the actions in the laundry list of examples is "[f]ailure to call the Company when an assignment ends."

Seymour testified that she sent documents to Iowa Workforce Development (IWD) for the fact-finding interview on April 8, 2020. Trade Team attached these documents to its appeal of the IWD representative's decision dated July 6, 2020 (reference 01). Trade Team contends it was denied an opportunity to participate in the fact-finding interview and the information it provided to IWD was not considered as a result. The undersigned has taken administrative notice of Trade Team's appeal and its attachments, which are the documents it contends it sent by fax to IWD and that were not considered by the agency.

In the documents, Trade Team states Kelly voluntarily quit her job with the explanation, "released from one customer. Has to call for new assignment and she did not. Please see attached documents." Seymour included a copy of Trade Team policies and procedures on assignments. With respect to the end of an assignment, the policy states in pertinent part:

When your assignment with a client ends, contact us within 24 hours. The end of a particular assignment does not terminate your employment with us as you remain an employee of the Company eligible for placement with another client. If you fail to contact us at the end of an assignment, you may be considered to have voluntarily resigned, and unemployment benefits may be denied.

The policy also contains the following call-in instructions:

In order to increase your chances to be called for upcoming assignments, it is your responsibility to keep in contact with us on a regular basis. To help us in assigning you to a position best suited to your skills and abilities, we suggest you call our office frequently (approximately 2 to 3 times a week for example), to advise us of your availability for work. It will be noted that you called in and we will keep your registration active and on the top of our rolls. In addition, after an assignment ends, you need to speak with someone at your local recruiting office within 24 hours after the end of your assignment to let us know you are looking for a new assignment. In order to express your availability to work, you will need to call at least once a week to the local TRADE TEAM office.

Trade Team assigned Kelly to work at Marinette Marine. On March 25, 2020, Marinette Marine notified Chris Szalmczynski that it was ending Kelly's assignment. Szalmczynski sent an email to Tanya Bingman, the human resources coordinator at Marinette Marine, asking if there was anything he could do to keep her working, such as getting her qualified in different welding procedures, he would be willing to do it.

Bingman replied in an email to Szalmczynski and Amy Stewart, who also works for Trade Team. In the email, Bingman informed them that Marinette Marine was ending Kelly's assignment due to dissatisfaction with her work. The implication being there was nothing Szalmczynski could do to keep Kelly working at Marinette Marine.

Trade Team had actual knowledge that Marinette Marine had ended Kelly's assignment before Kelly did. On March 26, 2020, Szalmczynski informed Kelly that her assignment had ended. Kelly asked Szalmczynski if Trade Team had any other work for her. He did not.

Kelly contacted Szalmczynski multiple over the following two weeks to ask if he had an assignment for her. He did not. Szalmczynski advised Kelly to contact another Trade Team recruiter named Beth. Kelly did so, but Beth did not have an assignment for her either.

Trade Team has not contacted Kelly with a new assignment since Marinette Marine ended her assignment. Trade Team did not notify Kelly that it had discharged her from employment. At hearing, Seymour testified Trade Team discharged Kelly. The evidence shows that Trade Team ended Kelly's employment on or about April 8, 2020, based on the mistaken belief that she did not call in to request a new assignment and categorized the separation as a voluntary quit under its policies because of this mistaken belief.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Trade Team discharged Kelly from employment for no disqualifying reason.

Iowa Code section 96.5(1) disqualifies a claimant from unemployment insurance benefits if the claimant voluntarily leaves employment without good cause attributable to the employer. Under Iowa Code section 96.5(1)(j) a claimant shall not be disqualified from benefits if:

(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.

Here, Trade Team's policy is stricter than section 96.5(1)(j). It requires an employee to contact Trade Team within 24 hours as opposed to three days and has no good cause exception to the

deadline. Because of this, the Trade Team policy is not controlling on the question of a claimant's eligibility for benefits under Iowa law.

Regardless, the evidence shows Trade Team knew of Kelly's assignment ending before Kelly knew. Trade Team notified Kelly that her assignment ended on March 26, 2020, the day after Marinette Marine notified Trade Team. And on March 26, 2020, Kelly requested a new assignment. Therefore, Kelly did not voluntarily quit her employment with Trade Team under Iowa law. Rather, the evidence establishes Trade Team discharged Kelly based on the erroneous belief that she had not requested a new assignment and categorized her separation as a voluntary quit under company policy.

Because Trade Team discharged Kelly, this decision must consider whether it did so for misconduct. In appeals such as this one, the issue is not whether the employer made a correct decision in discharging the 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). 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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The employer has the burden of proof in establishing disqualifying job misconduct. See, e.g., *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Under Iowa Administrative Code rule 871-24.32(1)(a):

The claimant's statement and 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.

Here, Trade Team has not met its burden of proof to show it discharged Kelly for misconduct related to her employment. There is an insufficient basis in the evidence from which to conclude either that Kelly committed an act of misconduct under rule 871-24.32(1)(a) or that Trade Team discharged her because of misconduct. Rather, the evidence shows that Trade Team ended Kelly's employment based on the mistaken belief that she had failed to request a new assignment when, in fact, Kelly requested a new assignment from Trade Team multiple times beginning on March 26, 2020. For these reasons, Kelly is entitled to unemployment insurance benefits, provided she is otherwise eligible under the law.

Because Kelly is entitled to regular unemployment insurance benefits under state law:

- 1) She is entitled to Federal Pandemic Unemployment Compensation (FPUC) under section 2104(B) of the CARES Act, Public Law 116-136.
- 2) The issue of whether IWD overpaid Kelly any benefits under Iowa Code section 96.3(7) and rule 871-24.10 is moot.

DECISION:

The July 6, 2020 (reference 01) unemployment insurance decision is affirmed. Trade Team discharged Kelly from employment for no disqualifying reason. Benefits are allowed, provided Kelly is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Ben Humphrey
Administrative Law Judge

August 31, 2020
Decision Dated and Mailed

bh/mh