

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**DANIELLE R FOX**

Claimant

**APPEAL NO. 21A-UI-03320-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE SERVICES INC**

Employer

**OC: 05/17/20**

**Claimant: Respondent (1)**

Iowa Code Section 96.5(2)(a) - Discharge

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 14, 2021, reference 03, decision that allowed benefits to the claimant, provided she was otherwise eligible, based on the deputy's conclusion that the claimant was discharged on October 30, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on March 23, 2021. Claimant, Danielle Fox, participated. Melissa Lewien represented the employer. The parties waived formal notice on the issue of whether the claimant was overpaid Pandemic Emergency Unemployment Compensation (PEUC). Exhibits 1 and 2 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO and KPYX.

**ISSUES:**

Whether the claimant was discharged from the assignment and/or the employment for misconduct in connection with the employment.

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: Advance Services, Inc. (ASI) is a temporary employment agency. The claimant, Danielle Fox, established her relationship with ASI in August 2019 and worked in multiple temporary, full-time work assignments at Pioneer Seed Corteva. The claimant began her most recent assignment on October 12, 2020 immediately after she completed another assignment she had started on August 19, 2020. The August 2020 assignment involved receiving corn and sampling product moisture samples. The October 2020 assignment involved processing returns of bags of corn and beans. The claimant's work hours in the most recent assignment were 7:00 a.m. to 3:30 p.m. Monday through Saturday. Pioneer/Corteva Floor Supervisor and ASI on-site representative Rhonda Linderman were the claimant's supervisors in the assignment. Ms. Linderman is no longer with ASI and did not participate in the appeal hearing. The jobsite was in Dysart, 25 miles from Waterloo. Though the claimant lives in Waterloo, all of the claimant's dealings with ASI, aside from those pertaining to unemployment insurance

proceedings, have been with Ms. Linderman at the Dysart Pioneer/Corteva. The claimant has had no contact with the Waterloo ASI office.

The claimant completed the most recent assignment on October 30, 2020. The client business and ASI ended the assignment. The client alleged that the claimant had become upset in the workplace and had walked away from her work station. Termination of the assignment immediately followed the claimant's in-person complaint to Ms. Linderman about what she perceived to be a Pioneer/Corteva representative's ill treatment of a coworker. After meeting with Ms. Linderman, the claimant returned to her workstation. Shortly thereafter, Ms. Linderman came to the claimant's workstation, terminated the assignment, and escorted the claimant out of the workplace. The claimant understood Ms. Linderman's actions to indicate she was discharged from the assignment and the ASI employment. Ms. Linderman alleged the claimant had been late for work. When the claimant challenged that allegation, Ms. Linderman accused the claimant of walking off the job. The claimant replied that she had only left her workstation to come speak to Ms. Linderman. Ms. Linderman said nothing about other assignments or about the claimant needing to contact the Waterloo ASI office. Ms. Linderman subsequently documented in her contact notes that the claimant did not ask for other work at the time of the October 30, 2020 contact. Though the employer now asserts Ms. Linderman directed the claimant to contact the ASI office in Waterloo, Ms. Linderman made no mention of said directive in her contact notes.

The claimant contacted Pioneer/Corteva directly on Tuesday, November 3, 2020 and spoke to the office manager. The claimant did not have further contact with ASI after October 30, 2020, aside from subsequent unemployment insurance proceedings.

In July 2019, the claimant participated in an ASI orientation. The employer had presented as an exhibit a document containing an Advance Services, Inc. Assignment Policy and End of Assignment Policy. The document indicates on its face it was electronically signed on July 17, 2019. The claimant does not recall electronically signing anything at that time. Rather, the claimant believes she physically signed documents at that time. The claimant does not recall this policy document being one that she signed at that time. The claimant does not recall signing or receiving a copy of the ASI End of Assignment Policy at that time. The claimant was aware at all relevant times that she was an ASI employee.

The claimant established an original claim for benefit that was effective May 17, 2020. ASI is a base period employer. Iowa Workforce Development set the weekly benefit amount for regular benefits at \$286.00. The claimant exhausted *regular* benefits during the benefit week that ended August 22, 2020. This was during her first partial week in the most recent ASI assignment. The claimant continued to make weekly claims while she was in the assignment, but did not receive benefits for the period of August 23, 2020 through October 31, 2020. Following termination of the assignment on October 30, 2020, the claimant continued to make weekly claims and commenced receiving \$286.00 in Pandemic Emergency Unemployment Insurance Compensation (PEUC). The claimant received PEUC benefits totaling \$6,578.00 for 23 weeks between November 1, 2020 and April 10, 2021. The claimant also received \$300.00 Federal Pandemic Unemployment Compensation for each of the 15 weeks between December 27, 2020 and April 10, 2021. The FPUC benefits for that period totaled \$4,500.00. None of the federal benefits paid to the claimant for the period of November 1, 2020 through April 10, 2021 may be assessed to the employer's account and none of the federal benefits have been assessed to the employer's account.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871-24.1(113) characterizes the different types of employment separations as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 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.

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993).

The weight of the evidence establishes that the claimant reasonably concluded she was discharged from the Pioneer/Corteva assignment and from the ASI employment on October 30, 2020, based on her interaction with the ASI on-site representative. At that time, the ASI representative came to the claimant's workstation, made multiple allegations of misconduct, terminated the assignment, and escorted the claimant from the workplace. A reasonable person in the claimant's position would have perceived this to be a discharge from the employment, rather than mere completion of a work assignment. The claimant was not directed to contact the Waterloo ASI for additional work assignment. Nor would a reasonable person in the claimant position have thought that to be an option.

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 employer has the burden of proof in a 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 Iowa Administrative Code rule 871-24.32(4).

The employer presented insufficient evidence to prove misconduct in connection with the assignment or the employment. The claimant was discharged for no disqualifying reason. The claimant's separation from the temporary employment agency was for good cause attributable to the employer. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The January 14, 2021, reference 03, decision is affirmed. The claimant was discharged on October 30, 2020 for no disqualifying reason. The claimant's separation from the temporary employment agency was for good cause attributable to the employer. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.



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James E. Timberland  
Administrative Law Judge

June 30, 2021  
Decision Dated and Mailed

jet/scn