IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

KATIE L MILLS
Claimant

RANDSTAD GENERAL PARTNER US LLC
Employer

APPEAL NO: 14A-UI-01371-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/05/14
Claimant: Respondent (1)

Section 96.5-1-j – Temporary Employment
871 IAC 24.26(15) – Temporary Employment
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Randstad General Partner U.S., L.L.C. (employer) appealed a representative's January 28, 2014 decision (reference 01) that concluded Katie L. Mills (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 27, 2014. The claimant participated in the hearing. Teresa Ray appeared on the employer's behalf. During the hearing, Employer's Exhibit One and Claimant's Exhibit A were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant's first and only assignment with the employer began on October 14, 2013. She worked full time as a call center representative at the employer's Des Moines, Iowa business client's facility. Her last day on the assignment was January 8, 2014. The assignment ended because the employer's business client determined to end it because of a belief that the claimant had posted disparaging comments about the business client on Facebook. The employer secondarily asserts that the claimant voluntarily quit by not seeking reassignment after the ending of the assignment.

The employer provided generic testimony that the claimant had made unprofessional comments on Facebook indicating that she did not like her job, that she did not like her supervisors, and that the employer, or the business client, was not a good place to work. The claimant denied posting any comments to this effect. She acknowledged that about two weeks prior to January 8 that she had posted a comment on her Facebook page asking, "Can you get fired for

going to jury duty?" in reference to a statement an assistant supervisor with the employer had made to her that she should not report for jury duty that would conflict with the work schedule. On January 7 this same assistant supervisor had asked that the claimant take down the comment from Facebook, which she did. The claimant also acknowledged that about two weeks prior to January 8 she had responded to a private instant message from a coworker on Facebook in which she indicates some problems with the employer's supervisor, but this posting was not a comment on the claimant's Facebook page itself. However, because the business client had been led to believe that the claimant was disparaging the business client, it terminated the claimant's assignment.

The claimant was informed of the ending of the assignment on the morning of January 9. That same day she attempted to call the assistant supervisor on the cell phone number with which she had communicated with him in the past and from which she had received text messages regarding the assignment. When he did not answer, she both left him a voice mail asking if there was any other work elsewhere, and sent him a text message inquiring if she could still be reassigned.

The employer has a two-page "Employment Policies and Procedures" agreement for assignees in Iowa. The agreement covers various issues, including attendance and terms of the arrangement. There is also a provision indicating that the assignee is to call the employer within three working days of completion of the assignment. The claimant signed this agreement, but was not affirmatively provided with a copy by the employer.

REASONING AND CONCLUSIONS OF LAW:

The essential question in this case is whether there was a disqualifying separation from employment. The first subissue in this case is whether the employer or the business client ended the claimant's assignment and effectively discharged her for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer or client was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate questions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. IDJS*, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Henry*, supra. In contrast, 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. 871 IAC 24.32(1)a; *Huntoon*, supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer or its business client for ending the claimant's assignment is the assumption that the claimant had made disparaging comments on her Facebook page. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant in fact made any disparaging comments on her Facebook page. The employer has not met its burden to show disqualifying misconduct. *Cosper*, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

The second subissue in this case is whether the claimant voluntarily quit by failing to affirmatively pursue reassignment.

An employee of a temporary employment firm who has been given proper notice of the requirement can be deemed to have voluntarily quit her employment with the employer if she fails to contact the employer within three business days of the ending of the assignment in order to notify the employer of the ending of the assignment and to seek reassignment. Iowa Code § 96.5-1-j. The statute provides in part, "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 employer did not affirmatively provide a copy of the document to the claimant; it is also somewhat questionable as to whether the document is "separate from any contract of employment."

Additionally, the intent of the statute is to avoid situations where a temporary assignment has ended and the claimant is unemployed, but the employer is unaware that the claimant is not working could have been offered an available new assignment to avoid any liability for unemployment insurance benefits. Where a temporary employment assignment has ended by the completion of the assignment of and the employer is aware of the ending of that assignment, the employer is already on "notice" that the assignment is ended and the claimant is available for a new assignment; where the claimant knows that the employer is aware of the ending of the assignment, she has good cause for not separately "notifying" the employer. Further, in this case the claimant reasonably believed that she had sought reassignment by her contacts with the employer after the ending of the assignment. 871 IAC 24.26(15).

Here, the employer was aware that the business client had ended the assignment; it considered the claimant's assignment to have been completed, albeit unsatisfactorily. The claimant is not required by the statute to remain in regular periodic contact with the employer in order to remain "able and available" for work for purposes of unemployment insurance benefit eligibility. Regardless of whether the claimant continued to seek a new assignment, the separation itself is deemed to be completion of temporary assignment and not a voluntary leaving; a refusal of an offer of a new assignment would be a separate potentially disqualifying issue. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's January 28, 2014 decision (reference 01) is affirmed. The claimant did not voluntarily quit and the employer did discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

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