

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ANGELIA F WALDRON
969 – 26TH ST
DES MOINES IA 50312

ADECCO USA, INC.
C/o TALX UC EXPRESS
PO BOX 66736
ST LOUIS MO 63166-6736

Appeal Number: 04A-UI-04238-RT
OC: 03-07-04 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Angelia F. Waldron, filed a timely appeal from an unemployment insurance decision dated April 1, 2004, reference 02, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on May 6, 2004, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where she or any of her witnesses could be reached for the hearing, as instructed in the notice of appeal. Deanna Dunn, Manager, participated in the hearing for the employer, ADECCO USA, Inc. The employer was represented by Joyce Habel of TALX UC eXpress. The administrative law judge takes official notice of Iowa Workforce Development

Department unemployment insurance records for the claimant. Employer's Exhibits One and Two are admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, including Employer's Exhibits One and Two, the administrative law judge finds: The claimant was employed by the employer from October 27, 2003 until she was discharged on November 14, 2003. The employer is an employment agency and at all material times hereto the claimant was assigned to ADP. A criminal background check is required by the employer and ADP. The claimant's criminal background check was performed and returned to the employer on November 14, 2003. That criminal background check appears at Employer's Exhibit Two and indicates that the claimant had a misdemeanor assault conviction in April 2003; a misdemeanor disorderly conduct conviction in September 2000; a felony forgery conviction and a misdemeanor identification theft conviction also in September 2000; a felony theft conviction and a felony forgery conviction in April 1993; and a misdemeanor assault conviction in June 1998. As a result of the criminal background check, the claimant was removed from her assignment at ADP because that assignment prohibits such criminal convictions for its employees. The claimant was also discharged by the employer, ADECCO USA, Inc., because the claimant had falsified her application for hire. In the claimant's application for hire as shown at Employer's Exhibit One, the claimant did check the question asking whether she had ever been convicted of a felony or misdemeanor but when asked to state the nature of the crimes and so forth, the claimant only indicated traffic tickets and concerning insurance, would show proof of insurance and the judge would drop the charges. Nothing was set out therein concerning any of the convictions listed above. Further, the claimant certified that all of the information was true and complete and she understood that if any false information, omissions, misrepresentations are discovered, she could be subject to discipline up to and including termination. When all of the criminal convictions were discovered, the claimant did not meet the employer's requirements and was discharged. Had the claimant truthfully answered the question and listed all of the convictions as noted above, the claimant would never have been hired by the employer or placed at ADP.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant's separation from the employment was a disqualifying event. It was.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

871 IAC 24.32(6) provides:

(6) False work application. When a willfully and deliberately false statement is made on an Application for Work form, and this willful and deliberate falsification does or could result in endangering the health, safety or morals of the applicant or others, or result in exposing the employer to legal liabilities or penalties, or result in placing the employer in jeopardy, such falsification shall be an act of misconduct in connection with the employer.

In order to be disqualified to receive unemployment insurance benefits pursuant to a discharge, the claimant must have been discharged for disqualifying misconduct. The administrative law judge concludes that the employer has met its burden of proof to demonstrate by a preponderance of the evidence that the claimant was discharged for disqualifying misconduct. The employer's witness, Deanna Dunn, Manager, credibly testified that when the claimant applied for work, she filled out a job application as shown at Employer's Exhibit One indicating that she had been convicted of a felony and misdemeanor but failing to set out any of her actual felony or misdemeanor convictions which was required by the application. The claimant was then placed with ADP, which prohibits employees from having criminal convictions. A criminal background check was obtained by the employer and it revealed a number of convictions, both misdemeanor and felony for various charges including felony theft, felony forgery on two occasions, misdemeanor identification theft and others as set out in the findings of fact. The most recent conviction occurred in April 2003 and the oldest was in April 1995. The administrative law judge must conclude on the evidence here that the claimant willfully and deliberately entered a false statement on her application for work. The claimant had a number of convictions, both felony and misdemeanor, as noted above. The administrative law judge cannot imagine in any way that the claimant would have simply forgotten to list those on her

application for hire when it requires that she state the nature of the crimes and when and where convicted and the disposition and she failed to do so for any of her convictions. It is true that the claimant did check yes for the question whether she had ever been convicted of a felony and misdemeanor but she deliberately left out the crucial information concerning all of her convictions. The administrative law judge also concludes that this failure, especially in view of the crimes for which the claimant was convicted, endangers the health safety or morals of others and also could easily result in exposing the employer to legal liabilities or penalties or placing the employer in jeopardy. Finally, the Iowa Supreme Court has ruled that a misrepresentation on a job application must be materially related to job performance to disqualify a claimant from receiving unemployment insurance benefits. Larson v. Employment Appeal Board, 474 N.W.2d 570 (Iowa 1991). Although the court did not define materiality, it cited Independent School District v. Hansen, 412 N.W.2d 320 (Minn. App. 1987), which stated that a misrepresentation is not material if a truthful answer would not have prevented the person from being hired. However, here, Ms. Dunn credibly testified that not only would the claimant never have been placed at ADP had she truthfully answered the questions and she had to be removed immediately from that assignment when the convictions were discovered but the claimant would never have been hired by the employer, ADECCO USA, Inc., because the claimant did not meet the employer's requirements. Therefore, the administrative law judge concludes that the claimant's misrepresentation or falsification was material. Therefore, the administrative law judge concludes that the claimant's falsification on her work application was disqualifying misconduct.

Accordingly, and for all the reasons set out above, the administrative law judge concludes that the claimant was discharged for disqualifying misconduct, and, as a consequence, she is disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she requalifies for such benefits.

DECISION:

The representative's decision of April 1, 2004, reference 02, is affirmed. The claimant, Angelia F. Waldron, is not entitled to receive unemployment insurance benefits until or unless she requalifies for such benefits.

pjs/kjf