

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDSAY L GILLUM
Claimant

APPEAL NO. 12A-UI-06190-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADECCO USA INC
Employer

OC: 04/01/12
Claimant: Respondent (1)

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Adecco USA Inc. filed a timely appeal from a representative's decision dated May 18, 2012, reference 01, which held that the claimant had been discharged under nondisqualifying conditions. After due notice was provided, a telephone hearing was held on June 20, 2012. Claimant participated. Participating on behalf of the employer was Mr. Tom Kuiper, Hearing Representative and witness, Ms. Marsha Hook, Recruiter. Employer's Exhibits One and Two were received into evidence.

ISSUE:

The issue in this matter is whether the claimant was discharged for misconduct sufficient to warrant the denial of unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having considered the evidence in the record, finds: Lindsay Gillum was employed by Adecco USA Inc., a staffing company, from January 3, 2012 until February 27, 2012 when the claimant was discharged from her assignment at the Praxair Company. Ms. Gillum had been assigned to work at the Praxair Company on a full-time basis on a long-term assignment.

The claimant was discharged when the client company felt that the notice provided by the claimant for leaving work during the work shift on February 27, 2012 was unacceptable. Ms. Gillum had been notified at approximately 2:00 p.m. that day that her child was ill at daycare and needed to be picked up. The claimant made several attempts to find her immediate supervisor at the Praxair Company but could not find her. Ms. Gillum considered the situation to be a form of an emergency and finally attempted to provide notification to her supervisor via email. Ms. Gillum also notified a crew worker that she had to leave and the reason for it. Adecco USA was notified by the client that Ms. Gillum had left work without authorization and wished the claimant removed from the assignment.

The claimant was contacted later in the day by Adecco and informed of her discharge from the assignment. Ms. Gillum was in the process of calling Adecco when she received the call from

Adecco informing her that her assignment had ended. Ms. Gillum contacted the staffing firm the next day by telephone to inquire about additional assignments. It appears that the representative that Ms. Gillum believed that she was speaking with was on vacation at the time however.

REASONING AND CONCLUSIONS OF LAW:

The first question before the administrative law judge is whether the evidence in the record establishes that Ms. Gillum quit her employment or whether the claimant was discharged by the employer. The evidence establishes that Ms. Gillum did not intentionally relinquish her position with either the temporary assignment or her employment with Adecco USA but her intent was only to leave the place of work prior to the end of her shift due to what the claimant reasonably considered to be an emergency circumstance. Her son was ill at school and needed to be picked up. Having determined that the claimant did not intentionally sever the employment relationship the administrative law judge considered whether the evidence in the record establishes sufficient intentional misconduct to warrant the denial of unemployment insurance benefits. It does not.

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 this matter. See Iowa Code section 96.6-2. Misconduct must be substantial in order to justify a denial of unemployment insurance benefits. Conduct serious enough to warrant the discharge of an employee may not necessarily be

serious enough to warrant the denial of unemployment insurance 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).

In this matter the administrative law judge finds the claimant to be credible in her testimony that she believed that it was necessary to leave work as soon as possible on February 27, 2012 because she had been contacted by her son's school and informed that her son was ill and needed to leave school. Ms. Gillum testified that she repeatedly attempted to find her immediate supervisor but could not do so and left only after exercising the only option she could think of, to email her supervisor explaining the necessity of her leaving. The administrative law judge also finds it credible that Ms. Gillum did not immediately contact Adecco because she was focusing her attention on the issue at hand, her sick son.

The administrative law judge also finds the claimant to be credible in her testimony that she contacted Adecco the following day to give notice of her availability for work. The claimant testified with specificity with respect to all these issues. The employer's witness was unable to testify with the same specificity.

While the decision to terminate Ms. Gillum may have been a sound decision from a management viewpoint, the evidence in the record does not establish disqualifying misconduct sufficient to warrant the denial of unemployment insurance benefits. The claimant's conduct at worst was an isolated instance of poor judgment exacerbated by the situation at hand. Benefits are allowed providing the claimant is otherwise eligible.

DECISION:

The representative's decision dated May 18, 2012, reference 01, is affirmed. Claimant was discharged for no disqualifying reason. Unemployment insurance benefits are allowed, providing the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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