

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIMBERLY J CHAMPAGNE**  
Claimant

**APPEAL NO. 14A-UI-12706-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEAM STAFFING SOLUTIONS INC**  
Employer

**OC: 07/13/14**  
**Claimant: Respondent (5)**

Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment  
Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 8, 2014, reference 02, decision that allowed benefits to the claimant effective November 16, 2014 provided she was otherwise eligible, based on an Agency conclusion that the claimant was able and available for work, but temporarily laid off. After due notice was issued, a hearing was held on January 15, 2015. Claimant Kimberly Champagne participated and was represented by attorney Jeffrey Lipman. Sarah Fiedler, Human Resources Generalist, represented the employer. The parties waived formal notice on the able and available issues. Exhibits One and Two were received into evidence.

**ISSUES:**

Whether the claimant's separation from the temporary employment agency was for good cause attributable to the employer.

Whether the claimant has been able to work and available for work since she established the additional claim for benefits that was effective November 16, 2014.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On September 6, 2014, claimant, Kimberly Champagne, suffered a left leg fracture and right elbow fracture in the course of her employment with Team Staffing Solutions. Team Staffing Solutions, Inc., is a temporary employment agency with a branch office in Iowa City. Ms. Champagne obtained work through the Iowa City office. Ms. Champagne's contact at that office was Jennifer Stuky, Branch Manager. At the time of her injury, Ms. Champagne was working in a temporary work assignment at Quality Associates. Ms. Champagne's injuries were initially evaluated at an Emergency Room. That medical provider fitted Ms. Champagne with a full leg splint and an arm splint. That medical provider took Ms. Champagne off work pending a follow up medical appointment. Team Staffing reported the matter as a worker's compensation injury and the employer's worker's compensation carrier arranged a follow up medical appointment that took place within three or four days of the Emergency Room evaluation. The

second medical provider kept Ms. Champagne off work. Ms. Champagne was in timely contact with Jennifer Stuky, who advised Ms. Champagne not to worry, to get well, and that she could return to work when the doctor released her to do so. Ms. Champagne began to receive weekly worker's compensation benefits.

On September 19, 2014, a medical doctor released Ms. Champagne to return to work with medical restrictions. Ms. Champagne had prior plans to go visit relatives for a week and did that before she returned to work at Quality Associates in a light-duty assignment. The doctor restricted Ms. Champagne to working no more than four hours per day. The doctor restricted Ms. Champagne to performing sedentary work, restricted her lifting with her right arm and restricted her from walking. Team Staffing Solutions and Quality Associates arranged a sedentary, light-duty assignment for Ms. Champagne that involved folding boxes and putting labels on boxes. For a time, Ms. Champagne continued to receive prorated worker's compensation benefits. During the last week of October 2014, the doctor increased the number of work hours Ms. Champagne could work to six hours per day. The worker's compensation benefits were discontinued at about this time.

On November 3, 2014, a Team Staffing Solutions account manager notified Ms. Champagne that Quality Associates had suspended her assignment pending a decision regarding whether she would be allowed to return to the assignment. The employer alleges that suspension was triggered by Ms. Champagne making inappropriate comments and engaging in inappropriate conduct at the work assignment.

On November 4, 2014, Ms. Champagne had a follow up medical appointment. At about that time, the doctor modified Ms. Champagne's medical restrictions to being on her feet for no more than two hours at a time followed by sitting for 30 minutes and limited Ms. Champagne to working no more than six hours a day initially, followed by a full eight-hour work day.

On November 5, 2014, Quality Associates notified Team Staffing that the assignment was ended. Ms. Stuky notified Ms. Champagne of Quality Associates' decision not to have her return and offered Ms. Champagne another light-duty assignment that was to begin the next day. Ms. Champagne accepted the new work assignment and started the new assignment on November 6, 2014. The new temporary work assignment was at the Crowded Closet, a thrift store in Iowa City. The duties included operating the cash register, pricing items for sale and ticketing items for sale. Ms. Champagne would be allowed to sit to perform the work. Ms. Champagne accepted the new work assignment and started the new assignment on November 6, 2014. Ms. Champagne worked in the assignment for a week and a half, through November 15, 2014.

On November 17, 2014, Ms. Stuky notified Ms. Champagne that the assignment at the Crowded Closet had ended. The employer alleges that someone at the client business could not determine when Ms. Champagne was working versus when she was on break and that the client business expressed annoyance with Ms. Champagne asking others for a ride. The employer alleges that termination of the work assignment followed Ms. Champagne being sent home early from the assignment on November 12 and Ms. Champagne being absent due to illness on November 13. Ms. Stuky directed Ms. Champagne to continue to call her availability for work on a weekly basis, that Team Staffing would put her back on the roster of employees available for work and that in the meantime, Ms. Champagne would again receive worker's compensation benefits.

Despite telling Ms. Champagne that the employer would continue to look for another assignment for her, the employer instead decided not to look for another assignment for

Ms. Champagne until she was released to return to work without restrictions. Ms. Champagne continued to make weekly contact with the employer. The employer documented only one such contact on December 12, 2014.

In response to the November 17, 2014, separation, Ms. Champagne established an additional claim for unemployment insurance benefits that was deemed effective November 16, 2014. In connection with that claim, Ms. Champagne received \$1,531.33 in benefits for the 10-week period of November 16, 2014 through January 24, 2015. Ms. Champagne exhausted her eligibility for regular benefits at that point.

On December 8, 2014, an Iowa Workforce Development representative entered a reference 02, decision that found the claimant to be temporarily laid off. A Workforce Advisor advised Ms. Champagne that because she was deemed temporarily laid off, she did not need to search for other employment. Ms. Champagne relied on that advice. Ms. Champagne kept in weekly contact with the employer, but did not look for other employment. Ms. Champagne has remained available for a work assignment that complies with the medical restriction put in place in November. The employer has the ability to place Ms. Champagne in a work assignment that meets those medical restrictions, but has elected not to do that.

On January 9, 2015, Ms. Champagne had a follow up appointment with a doctor regarding her leg. Ms. Champagne's leg is not improving. Ms. Champagne and her doctor are planning for an upcoming surgery on Ms. Champagne's leg, but are waiting on the worker's compensation carrier's approval of the surgery. The doctor has advised Ms. Champagne that recovery from the surgery will be prolonged and that she will be in increased pain after the surgery.

#### **REASONING AND CONCLUSIONS OF LAW:**

Workforce Development rule 871 IAC 24.1(113) provides 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.

Iowa Code § 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.

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 this 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 871 IAC 24.32(4). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See Crosser v. Iowa Dept. of Public Safety, 240 N.W.2d 682 (Iowa 1976).

The employer alleges that the assignment at Quality Associates and the assignment at Crowded Closet came to an end because of misconduct on the part of Ms. Champagne. The

employer presented insufficient evidence, and insufficiently direct and satisfactory evidence, to establish misconduct in connection with either assignment. The employer alleges that the first assignment ended due to inappropriate comments and conduct on the part of Ms. Champagne. The employer alleges that the assignment at Crowded Closet came to an end because the client business could not tell when Ms. Champagne was working versus when she was on break. The employer's only evidence concerning either allegation consisted of hearsay within hearsay. The employer did not present testimony from a single witness with personal knowledge of the alleged misconduct. The employer had the ability to present such testimony. The employer's decision to move Ms. Champagne immediately into the Crowded Closet assignment upon the end of the Quality Associates assignment suggests that transition was for something other than misconduct. Ms. Champagne did not separate from either assignment for a reason that would disqualify her for benefits.

Ms. Champagne demonstrated the ability to perform the light-duty work assigned to her in both assignments. There is no indication in the record that her separation from either was premised on her inability to perform the assignment work. The employer had an obligation to provide the claimant with reasonable accommodations that would allow her to continue in the work. See Sierra v. Employment Appeal Board, 508 N.W. 2d 719 (Iowa 1993). The weight of the evidence indicates that the employer did indeed have the ability to provide Ms. Champagne with reasonable accommodations through a light-duty assignment that would meet her medical restrictions. The employer demonstrated that ability, and the claimant demonstrated her ability to perform the work, through the two assignments that followed her injury. The employer is a temporary employment agency, not a single-facility employer employing a highly specialized workforce. This employer *elected* to place the claimant in unpaid status, rather than continue to provide work that met the restrictions caused by injury suffered in the course of the employment.

The claimant was laid off effective November 17, 2014. Prior to the January 15, 2015, appeal hearing, the claimant reasonably believed the layoff was temporary. Prior to the appeal hearing, the employer had never advised the claimant that she could not return until she had no medical restrictions. The separation from the employment was for good cause attributable to the employer. The separation did not disqualify the claimant for unemployment insurance benefits. The claimant was eligible for benefits, provided she met all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Iowa Admin. Code r. 871-24.22(1)a, (2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The claimant demonstrated her ability to perform work during the two temporary employment work assignments that followed her injury. At the time the claimant separated from the employment and established her additional claim for benefits, the doctor had relaxed her medical restrictions to include standing work with appropriate breaks. Prior to the entry of the present decision, Ms. Champagne was not on notice from the employer or from Workforce Development that she needed to search for work other than through Team Staffing Solutions during what she reasonably concluded was a temporary layoff. The claimant met the able and available and appropriate work search requirement during the 10-week period of November 16, 2014 through January 24, 2015 when her additional claim for benefits was active. Effective January 24, 2015, the claimant exhausted her claim for regular unemployment insurance benefits in connection with her current benefit year. For that reason, there is no need at present to adjudicate her future ability to perform work or availability for work.

**DECISION:**

The December 8, 2014, reference 02, decision is modified as follows: The claimant was laid off effective November 17, 2014. The claimant's separation from the temporary employment agency at that time was for good cause attributable to the temporary employment agency. The claimant met the work ability, work availability, and appropriate work search requirement during the 10-week period of November 16, 2014 through January 24, 2015 when her additional claim for benefits was active. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs