**IOWA WORKFORCE DEVELOPMENT**
**UNEMPLOYMENT INSURANCE APPEALS**

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

**JEREMY R MUNSON**
Claimant

**R J PERSONNEL INC**
Employer

**APPEAL NO. 17A-UI-01278-JTT**

**ADMINISTRATIVE LAW JUDGE DECISION**

**OC: 12/18/16**
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 1, 2017, reference 04, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits. Based on the claims deputy's conclusion that the claimant's May 26, 2016 was for good cause attributable to the employer. After due notice was issued, a hearing was held on February 24, 2017. Claimant Jeremy Munson participated. Lucas Jensen represented the employer. Exhibit 1 was received into evidence. The administrative law judge took official notice of the agency's administrative record of benefits disbursed to the claimant and of the fact-finding interview documents.

**ISSUES:**

Whether the claimant was discharged from the work assignment for a reason that would disqualify him for benefits or relieve the employer of liability for benefits.

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: R.J. Personnel, Inc. is a temporary employment agency. Jeremy Munson performed work for R.J. Personnel at a single full-time, temp-to-hire work assignment at Hon Oak Laminate/Allsteel. Mr. Munson began the assignment on April 25, 2016 and last performed work in the assignment on May 25, 2016. Mr. Munson's regular work hours in the assignment were 6:30 a.m. to 3:30 p.m., Monday through Friday. Mr. Munson's supervisor at the assignment was a Chris, last name unknown. Account Manager Christine Fair was Mr. Munson's primary contact at R.J. Personnel. Ms. Fair is no longer with R.J. Personnel.

On May 26, 2016, Hon ended the assignment based on attendance.

R.J. Personnel's has an attendance policy that includes an absence notification policy. Under that policy, employees are required to notify via telephone the employer, R. J. Personnel, and

the client business, Hon/Allsteel, prior to the start of the shift if they need to be absent. However, this is not the absence notification policy that the onsite R.J. Personnel representative, Clara Arsale, reviewed with Mr. Munson at the beginning of his employment. Ms. Arsale is no longer with R.J. Personnel. Mr. Munson was told that he needed only to notify Hon/Allsteel of his need to be absent.

The final absence that prompted Hon to end the assignment occurred on May 26, 2016. On that day, Mr. Munson was absent due to illness and notified Hon prior to the scheduled start of his shift. Later that day, a Hon representative notified Account Manager Christine Fair that Hon was ending the assignment. Mr. Munson had been absent due to illness on May 6, 2016 and had notified Hon prior to the start of his shift of his need to be absent. On April 29, 2016, Mr. Munson was absent due to his need to address a non-emergency family matter out of state and notified Hon prior to the start of his shift.

Ms. Fair telephoned Mr. Munson on the afternoon of May 26, 2016, to tell him that Hon had ended the assignment and that he should not appear for work the next day. Mr. Munson asked whether R.J. Personnel had any other work for him. Ms. Fair indicated that she did not have any additional work for him at that time. Mr. Munson next had contact with R.J. Personnel on June 15, 2016, when he inquired about a potential assignment.

On April 25, 2016, R.J. Personnel had Mr. Munson sign an Availability Statement and provided Mr. Munson with a copy of the document. The document stated as follows:

> As an employee of Temp Associates, RJK I am required to sign Temp Associates/RJK work available log after my assignment ends or it temporarily stopped within 3 working days. My failure to do so within the time limit will be considered a voluntary quit and my eligibility for unemployment insurance benefits will be affected. My signature below affirms that I received a copy of this statement.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative judge is confronted in this matter with an employer witness who lacks any personal knowledge of the relevant matters and a claimant with an evolving story concerning relevant matters.

The administrative law judge will first address Mr. Munson's discharge from the Hon assignment.

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).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See 871 IAC 24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See *Higgins v. Iowa Department of Job Service*,

350 N.W.2d 187 (Iowa 1984). Employers may not graft on additional requirements to what is an excused absence under the law. See *Gaborit v. Employment Appeal Board*, 743 N.W.2d 554 (Iowa Ct. App. 2007). For example, an employee's failure to provide a doctor's note in connection with an absence that was due to illness properly reported to the employer will not alter the fact that such an illness would be an excused absence under the law. *Gaborit*, 743 N.W.2d at 557.

The weight of the evidence in the record establishes that the final absence the triggered Hon to discharge Mr. Munson from the assignment was an absence due to illness and was properly reported to Hon pursuant to the instructions Mr. Munson had received at the start of the assignment. The next most recent absence had been on May 6, 2016. That absence had also been due to illness and was properly reported. These absences were excused absences under the applicable law and cannot serve as a basis for disqualifying Mr. Munson for benefits. The discharge from the assignment was not based on a current act of misconduct. The discharge from the assignment did not disqualify Mr. Munson for benefits.

Iowa Code § 96.5-(1)-j provides:

> An individual shall be disqualified for benefits:
>
> 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.

The employer's Availability Statement imposes a requirement that the statute does not. The extra requirement imposed by the employer's policy statement is that Mr. Munson sign an "available log." Mr. Munson's failure to fulfill that specific requirement would not make the separation from the employer without good cause attributable to the employer. Mr. Munson was the only person who testified from personal knowledge regarding the contact between himself and R.J. Personnel on May 26, 2016. The weight of the evidence establishes the topic of whether there was additional work for Mr. Munson was addressed during that call and that the R.J. Personnel representative told Mr. Munson there was no other work for him at that time. Through that discussion, Mr. Munson fulfilled his statutory obligation to contact the employer within three days of the end of the assignment to indicate his availability for a new assignment and to request an additional assignment. The May 26, 2016 separation was for good cause attributable to the employer. Mr. Munson is eligible for benefits provided he is otherwise eligible. The employer's account may be charged.

**DECISION:**

The February 1, 2017, reference 04, decision is affirmed. The claimant's May 26, 2016 separation from the temporary employment agency was for good cause attributable to the temporary employment agency. The claimant is eligible for benefits provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland
Administrative Law Judge

_____
Decision Dated and Mailed

jet/rvs