

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANDREW B HAIR
Claimant

APPEAL NO. 14A-UI-12745-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RANDSTAD GENERAL PARTNER US LLC
Employer

OC: 04/20/14
Claimant: Appellant (2)

Section 96.5(2)a – Discharge
871 IAC 24.3(8) – Current Act of Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated December 5, 2014 (reference 03) which denied unemployment insurance benefits. After due notice was provided, a telephone hearing was held on January 7, 2015. Claimant participated. The employer participated by Ms. Terri Hunter, Branch Manager. Employer's Exhibits A, B, C, and D were received into evidence.

ISSUE:

At issue is whether the claimant was discharged for a current act of misconduct.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Andrew Hair was employed by the captioned temporary employment service from January 18, 2014 until November 19, 2014 when he was discharged from employment. Mr. Hair was assigned to work at the Genco Company as a forklift operator and was being paid by the hour. Although Mr. Hair was an employee of Randstad General Partner US LLC, Mr. Hair was also expected to comply with Genco's attendance policies.

Genco, the client employer of Randstad General Partner US LLC, utilizes a "no-fault" attendance policy that subjects an employee from termination of employment if they accumulate three attendance infraction points during their first 90 days of employment.

During the course of his assignment at Genco, Mr. Hair was at times sent home early due to lack of work. However, the company listed the claimant's leaving as an attendance point violation; assessing partial infraction points. On one occasion Mr. Hair was unable to report due to illness and properly reported his impending absence. The final attendance infraction that caused the claimant's discharge from employment took place on November 9, 2014 when Mr. Hair was unable to report to work due to a transportation issue. The claimant's jacket and his car keys had been stolen by another individual and the claimant was unable to secure a replacement. The claimant denies being absent the following work shift on November 10, 2014.

Although the client employer was aware of the attendance infractions and their belief that Mr. Hair was to be separated from employment for his attendance infractions, the client employer and Randstad General Partner US LLC allowed Mr. Hair to continue to work for a full week before discharging the claimant from employment. No further acts were attributable to being misconduct took place during the final week that the claimant was allowed to continuing working and reported as directed for work.

REASONING AND CONCLUSIONS OF LAW:

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).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

In discharge cases, the employer has the burden of proof to establish disqualifying conduct on the part of the claimant. 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, may not necessarily be 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. of Appeals 1992).

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. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's no-fault absenteeism policy is not dispositive of the issue of qualification for benefits. Failure to report to work without notification to the employer is generally considered an unexcused absence. Absence related to issues of personal responsibility such as transportation or oversleeping are generally considered unexcused.

In the case at hand, a number of the attendance infractions attributed to the claimant as being unexcused appear to have been on dates when Mr. Hair left work early because he had been directed to do so by the client employer because of low work volume. Mr. Hair also maintains that he did work on one or more of the days that the client employer reported to Randstad General Partner US LLC that the claimant had been absent on.

The business records attendance report, provided by the client company to Randstad General Partner US LLC, reflect that Mr. Hair had been absent due to a sick child on one occasion and that the claimant had again been absent on November 4, 2014. The attendance reports also reflect that Mr. Hair was absent on November 9 and November 10, 2014 due to loss of his car keys. Mr. Hair denies being absent on November 10; asserting that the lack of his signature on the infraction attributed to him for November 10 did not occur because he was not given an infraction slip to acknowledge and sign.

The administrative law judge also notes that although the client employer had concluded that the claimant had engaged in work misconduct by being excessively absent, in violation of their attendance policies, on November 9 and November 10, 2014; the claimant was not discharged but was allowed to continue to work and perform services for the client employer for an additional week before he was discharged from employment. The employer had provided no good cause reason for the delay in the claimant's discharge, except the explanation that the paperwork was "behind." There is no evidence in the record of any disqualifying misconduct on the part of Mr. Hair during the one-week period following his final attendance infraction and his discharge from employment.

For the above-stated reasons, the administrative law judge concludes that the claimant's discharge that took place on November 18, 2014 was not for a current act of misconduct sufficient to warrant the denial of unemployment insurance benefits. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated December 5, 2013 (reference 03) is reversed. The claimant was not discharged for a current act of misconduct sufficient to warrant the denial of unemployment insurance benefits. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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