

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

OULAIVANE LO
Claimant

APPEAL NO. 18A-UI-09756-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RANDSTAD GENERAL PARTNER US LLC
Employer

OC: 04/08/18
Claimant: Respondent (1)

Iowa Code section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 12, 2018, reference 03, decision that allowed benefits to the claimant provided she was otherwise eligible and that held the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant was discharged on August 13, 2018 for no disqualifying reason. After due notice was issued, a hearing was held on October 8, 2018. Claimant Oulaivane Lo participated. Mark Brickner represented the employer and presented additional testimony through Markie Bacon. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. The administrative law judge took official notice of the fact-finding materials.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Oulaivane Lo was employed by Randstad General Partner U.S., L.L.C. as a full-time Staffing Manager from May 9, 2018 until August 13, 2018, when Mark Brickner, Vice President of Market Sales, discharged her from the employment. Markie Bacon, Market Manager, was Ms. Lo's immediate supervisor. Randstad is a temporary employment agency that provides temporary workers to client businesses. Ms. Lo's duties involved selling services to those client businesses, recruiting new workers, and administrative and compliance duties. Ms. Lo's recruiting duties included interviewing applicants. Her administrative duties included running the front desk and answering the phone. The administrative and compliance duties included collecting required information for payroll and purposes and performing background checks of employees before they were placed with a client business. The background check process was supposed to include following up on job references by briefly interviewing two prior supervisors concerning dates of the prior employment, the former employees job performance, and whether the former

supervisor deemed the employee rehirable. Though Ms. Lo came to the employment with work experience through another temporary employment agency, she felt overwhelmed by her duties at Randstad throughout the brief period of employment.

On July 5, 2018, Mr. Brickner audited Ms. Lo's work in performing background checks prior to placing workers in data entry positions at a particular client business. During that audit, Mr. Brickner discovered that Ms. Lo had placed three workers at the client business without completing the necessary reference checks. For all three workers, Ms. Lo had erroneously documented in the employer's computer system that she had completed a reference check. For at least two of the workers, Dede Beal and Angeline Avon, Ms. Lo had made a telephone call to a former supervisor, but did not speak to a supervisor. Ms. Beal started her assignment with the client business on June 25 in the absence of any reference check. Ms. Lo documented on July 3 that the reference check for Ms. Beal had been completed. Ms. Avon began her assignment with the client business on July 3. Ms. Lo did not fully understand Randstad's computer "widget" system and this led to her documenting in the computer system that the reference checks were done when they were not done. Ms. Lo thought she would be able to go back and supplement the reference check information. In any event, Ms. Lo placed the three workers at the client business without first performing the necessary reference check. After Mr. Brickner completed the July 5 audit, he met with Ms. Lo to re-emphasize the need to obtain two supervisor references prior to placing an applicant in an assignment and to warn Ms. Lo that she would be discharged if she placed additional workers in assignments without first completing the reference check process. Mr. Brickner's underlying concern was the potential damage to Randstad's relationship with the client business, or loss of the contract, in the event that improperly vetted workers engaged in unethical conduct or other misconduct in connection with their work assignments.

On August 10, 2018, Mr. Brickner conducted another audit of Ms. Lo's work in placing workers at the same client business. Mr. Brickner noted issues with three workers that Ms. Lo had placed in assignments at the client business. For each of the three employees, Ms. Lo had interviewed a former supervisor, but had then interviewed a former coworker, rather than interviewing a second former supervisor. Ms. Lo had been hindered in her efforts to vet these three workers through their failure to name a second former supervisor and their naming of a former coworker as their second job reference. Mr. Brickner concluded that in connection with two of the workers, Patricia Florez and Latesha Johnson, Ms. Lo had not obtained sufficiently detailed information from the former supervisor. Ms. Lo had placed Ms. Florez in an assignment that was to start on July 23, but Ms. Florez did not appear for the assignment. Ms. Lo placed Ms. Johnson in an assignment on July 27, but Ms. Johnson ceased appearing for the assignment after three days. Ms. Lo placed Antoinette Simms in an assignment on August 6, 2018. Ms. Simms fell asleep during orientation and was immediately dismissed by the client.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the

worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The weight of the evidence in the record establishes a discharge for no disqualifying reason. The evidence fails to establish misconduct in connection with the reference checks that factored in Mr. Brickner's August 10 audit. The weight of the evidence establishes that Ms. Lo had performed the background and reference checks for those three employees in good faith and to the best of her ability under the circumstances. The weight of the evidence fails to establish a causal connection between Ms. Lo's reference check for these three employees and how the placements, or attempted placement, played out. Ms. Lo's inability to perform to the employer's satisfaction did not constitute misconduct under the circumstances. Because the evidence fails to establish misconduct in connection with the final audit, the evidence fails to establish a discharge based on a current act. For that reason, the administrative law judge need not further consider the conduct that factored in the July 5, 2018 audit. Ms. Lo is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

DECISION:

The September 12, 2018, reference 03, decision is affirmed. The claimant was discharged on August 13, 2018 for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs