

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TANNER F BAKER
Claimant

APPEAL NO. 17A-UI-06208-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC
Employer

OC: 05/14/17
Claimant: Respondent (1)

Section 96.5-1-j – Separation from Temporary Employer
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

Advance Services (employer) appealed a representative's June 16, 2017, decision (reference 02) that concluded Tanner (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 5, 2017. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Melissa Lewien, Risk Manager. The employer offered and Exhibit 1 was received into evidence. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer is a temporary employment service. The claimant performed services from March 6, 2017, through May 11, 2017, for Maurer Manufacturing as a full-time welder. His job assignment sheet indicated he must be able to do all types of welds and lift up to fifty pounds.

He suffered a non-work-related injury on May 1, 2017, and reported it to his employer on May 2, 2017. He continued to work through May 11, 2017. On May 15, 2017, the claimant provided the employer with a doctor's release that said, "able to work, but limit bending/lifting to his tolerance." The employer ended his assignment on May 15, 2017, because of the doctor's note. The employer will only place workers with non-work-related injuries in jobs when the worker has a full release from a physician. The employer has no work available for the claimant because his release has restrictions.

The claimant filed for unemployment insurance benefits with an effective date of May 14, 2017. He has received no benefits since his separation from employment. The employer participated personally in the fact finding interview on June 15, 2017, by Melissa Lewien.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant not discharged for misconduct.

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 establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The employer has a 100-percent healed policy regarding non-work-related medical issues. This is a policy that requires employees to have no medical limitations or restrictions before the employer will return the employee to work. The Americans with Disabilities Act prohibits employers from "using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a

class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity.” 42 U.S.C. Section 12112 (b)(6). A policy which substitutes “individual assessment of an individual’s ability to perform the essential functions of the person’s job with or without accommodation following injury” with “simply a determination of whether the person is 100-percent healed” from the injury...is a far cry from the requirements of the ADA.” *Hutchinson v. United Parcel Service, Inc* 883 F. Supp. 379, 397 (N.D. Iowa 1995).

The employee must not refuse work out of hand. It must ask some questions. In this case the employer should have asked whether the claimant’s restrictions would impact one or more of his job functions. The answer to whether the claimant could have tolerated his work is unknown. The employer discharged the claimant for having a doctor’s note with restrictions. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative’s June 16, 2017, decision (reference 02) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs