

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TONY, ROGER, A
Claimant

APPEAL NO. 12A-UI-07194-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**L A LEASING INC
SEDONA STAFFING**
Employer

**OC: 05/20/12
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Roger Toney filed a timely appeal from the June 18, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on July 11, 2012. Mr. Toney participated. Colleen McGuinty represented the employer and presented additional testimony through Nikki Kiefer, President.

ISSUE:

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: Roger Toney established his employment relationship with Sedona Staffing in January 2012. On January 30, 2012 Mr. Toney started a long-term full-time work assignment at John Deere Harvester in East Moline Illinois, where he worked as a Quality Engineer. Mr. Toney's supervisor at the John Deere assignment was Kamal Verma, John Deere Quality Manager. John Deere ended the assignment on May 14, 2012 in response to an e-mail message Mr. Toney sent to a John Deere employee. A John Deere employee had lost her copies of documents Mr. Toney had previously scanned to her. John Deere then advised Mr. Toney additional scans were not acceptable. In his message to the John Deere employee, Mr. Toney told her that if she wanted hard copies, she could come and get them. The employee complained to Mr. Verma about Mr. Toney. Mr. Verma ended the assignment without discussing the matter with Mr. Toney.

Ben Hochstatter, a John Deere human resources representative, notified Mr. Toney on May 14, 2012, that there was nothing that could be done to keep Mr. Toney in the assignment. Mr. Toney asked whether there was another job assignment available and Mr. Hochstatter directed Mr. Toney to contact Sedona Staffing's office. Mr. Toney erroneously concluded that Mr. Hochstatter was a Sedona Staffing employee. Nikki Kiefer, President of Sedona Staffing,

was the Sedona Staffing representative following Mr. Toney's assignment at John Deere. Mr. Toney did not make further contact with Sedona Staffing after he was discharged from the assignment on May 14, 2012 until June 25, 2012, when he sent an email message inquiring about his final pay for the assignment.

Sedona Staffing has an end-of-assignment notification policy that obligated Mr. Toney to contact Sedona Staffing within three working days of the end of an assignment to indicate his availability for a new assignment or face being disqualified for unemployment insurance benefits based on a voluntary quit. The policy was set out as a separate stand-alone policy on a separation piece of paper. Mr. Toney signed the policy and got a copy of it.

Mr. Toney established a claim for unemployment insurance benefits that was effective May 20, 2012.

REASONING AND CONCLUSIONS OF LAW:

The evidence establishes that Mr. Toney was discharged from the assignment at John Deere on May 14, 2012 in connection with a less than cordial interaction with a John Deere employee.

Iowa Code section 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.

871 IAC 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.

The employer has the burden of proof in a discharge 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).

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).

There is insufficient evidence in the record to establish that the discharge from John Deere was based on misconduct in connection with the work assignment. The discharge from the assignment would not disqualify Mr. Toney for unemployment insurance benefits.

Iowa Code section 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. 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.

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.

For the purposes of this paragraph:

(1) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(2) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

871 IAC 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 end-of-assignment notification policy complies with the requirements of the statute. Mr. Toney signed the policy and got a copy of it. Mr. Toney was obligated under the policy, and under the statute, to contact Sedona Staffing within three working days of the end of the assignment to indicate his availability for a new assignment. Mr. Toney did not comply with that requirement. Mr. Toney's conversation with Mr. Hochstatter did not satisfy that requirement. Mr. Toney's May 2012 separation from Sedona Staffing was without good cause attributable to the temporary employment agency. Mr. Toney is disqualified from benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount, provided he is otherwise eligible. The employer's account will not be charged.

DECISION:

The Agency representative's June 18, 2012, reference 01, decision is affirmed. The claimant's May 2012 separation from the temporary employment agency was without good cause attributable to the temporary employment agency. The claimant is disqualified from benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount, provided he is otherwise eligible. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs