

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTI L WILLIAMS**  
Claimant

**APPEAL NO. 12A-UI-14425-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MIDWEST PROFESSIONAL STAFFING LLC**  
Employer

**OC: 05/06/12**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Kristi Williams filed a timely appeal from the November 29, 2012, reference 05, decision that denied benefits based on an agency conclusion that she had been discharged for misconduct on November 2, 2012. After due notice was issued, a hearing was held on January 11, 2013. Ms. Williams participated. Rachel Mikel, Staffing Manager, represented the employer.

**ISSUES:**

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

Whether Ms. Williams' 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: Midwest Professional Staffing is a temporary employment agency. Kristi Williams performed work for the employer for one full-time, temporary assignment at Equifax, where Ms. Williams' duties involved verifying employment status of loan applicants. Ms. Williams started the assignment on June 22, 2012 and was discharged from the assignment on November 5, 2012. Ms. Williams learned from Midwest Professional Staffing that she was being discharged for allegedly making obscene gestures to another worker, for allegedly disturbing coworkers, for allegedly being rude to employers, and for alleged poor quality performance. Once Equifax decided to end Ms. Williams' assignment, Midwest Professional Staffing was not interested in placing her in further assignments due to its conclusion, based solely on the allegations from Equifax, that Ms. Williams demonstrated poor attitude.

**REASONING AND CONCLUSIONS OF LAW:**

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 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).

The employer has presented insufficient evidence, and insufficiently direct and satisfactory evidence, to establish misconduct in connection with the employment. The employer did not

present testimony from a single person with first-hand, personal knowledge of the alleged misconduct that led to Ms. Williams discharge from the assignment or to the temporary employment agency's decision not to place her in further assignments. The employer's evidence was limited to allegations of misconduct without proof of misconduct. Ms. Williams was discharged from the assignment and from the employment for no disqualifying reason. Ms. Williams' November 5, 2012 separation from the temporary employment agency was for good cause attributable to the employer. Ms. Williams is eligible for unemployment insurance benefits, provided she is otherwise eligible. The employer's account may be charged.

**DECISION:**

The Agency representative's November 29, 2012, reference 05, decision is reversed. The claimant was discharged from the work assignment and from the employment for no disqualifying reason. The claimant's November 5, 2012 separation from the temporary employment was for good cause attributable to the employer. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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