

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIE L BLEDSOE**  
Claimant

**APPEAL NO. 10A-UI-08681-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**L A LEASING INC  
SEDONA STAFFING**  
Employer

**OC: 05/09/10  
Claimant: Respondent (1)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct  
Iowa Code Section 96.5(1)(j) – Temporary Employment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 14, 2010, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on August 3, 2010. Claimant participated. Colleen McGuinty, Unemployment Benefits Administrator, represented the employer and presented additional testimony through Sharon Hagedorn, Branch Manager. Exhibit One was received into evidence.

**ISSUE:**

Whether Mr. Bledsoe separated from the temporary work assignment or the employment for a reason that disqualifies him for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. Willie Bledsoe began his employment relationship with Sedona Staffing in July 2009 and worked in five assignments. On February 10, 2010, Mr. Bledsoe started a full-time temporary work assignment at Blackhawk Engineering. Mr. Bledsoe last performed work in the assignment on May 6, 2010. On that day, Mr. Bledsoe left work early after a friend of his girlfriend left Mr. Bledsoe's personal belongings outside the workplace. Before Mr. Bledsoe left early, he spoke to his immediate supervisor, who approved the early departure. Mr. Bledsoe did not contact Sedona Staffing to notify them that he was leaving early. Mr. Bledsoe left work early so that he could secure his personal belongings. Mr. Bledsoe had given no indication that he intended to separate from the assignment or the employment. Rather, Mr. Bledsoe had left personal papers, his social security card and other personal property at his work station with the expectation that he would return to the assignment the following day. Blackhawk Engineering decided to end the assignment based on Mr. Bledsoe's early departure on May 6, 2010. On the morning of May 7, 2010, Sharon Hagedorn, Sedona Staffing Branch Manager, notified Mr. Bledsoe that the assignment was ended. Mr. Bledsoe explained the circumstances of his early departure and denied that he had

voluntarily quit the assignment or the employment. Mr. Bledsoe expressed interest in a further assignment, but the employer did not have a further assignment for him at that time.

### **REASONING AND CONCLUSIONS OF LAW:**

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See Local Lodge #1426 v. Wilson Trailer, 289 N.W.2d 698, 612 (Iowa 1980) and Peck v. EAB, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The evidence in the record establishes a discharge, not a voluntary quit.

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).

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. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See 871 IAC 24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984).

A single unexcused absence is not misconduct. Sallis v. Employment Appeal Board, 437 N.W.2d 895 (Iowa 1989)

The weight of the evidence in the record establishes a discharge based on a single unexcused absence. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Bledsoe was discharged from the assignment for no disqualifying reason. Mr. Bledsoe requested a further assignment on May 7, 2010, but the employer did not have a new assignment available at that time. This contact satisfied any obligation Mr. Bledsoe might have under Iowa Code section 96.5(1)(j), and made the separation from Sedona Staffing for good cause attributable to the employer. Mr. Bledsoe is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Bledsoe.

**DECISION:**

The Agency representative's June 14, 2010, reference 01, decision is affirmed. The claimant was discharged from the assignment for no disqualifying reason. The claimant's May 7, 2010 separation from the temporary employment agency was for good cause attributable to the employer. The claimant is eligible for benefits, provided he 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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