

Mr. Lockwood responded, "Fuck you," and walked off the job. On the same day, Mr. Lockwood went to Express Services and spoke with Staffing Consultant Andre Smith. Mr. Smith advised Mr. Lockwood that he was being discharged from Express Services based on the report from Sunny Fresh. Mr. Lockwood denied making the statement attributed to him. Mr. Lockwood advised that he went to the supervisor for assistance because a coworker had been harassing him, that the supervisor advised him, "You don't belong here," and discharged him from the assignment. Mr. Smith indicated he would obtain a written statement from Sunny Fresh and proceed accordingly. When Sunny Fresh failed to respond to a request for a statement about the incident, Express Services offered Mr. Lockwood a new assignment.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the evidence in the record establishes that Mr. Lockwood was discharged from his assignment at Sunny Fresh for misconduct in connection with his employment. It does not.

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.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445, 448 (Iowa 1979).

Since the claimant was discharged, 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). 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).

The evidence in the record fails to corroborate or substantiate the allegation that Mr. Lockwood engaged in misconduct in connection with the assignment at Sunny Fresh.

The next question is whether the evidence in the record establishes that Mr. Lockwood was discharged from his employment relationship with Express Services for misconduct in connection with his employment. The appropriate legal authority is set forth above. The evidence in the record fails to corroborate or substantiate the allegation that Mr. Lockwood was discharged from the employment at Express Services for misconduct in connection with the employment.

Since Express Services discharged Mr. Lockwood from the employment on September 15, 2005, and Mr. Lockwood did not quit, the provisions of Iowa Code section 96.5(1)(j) are not applicable.

DECISION:

The Agency representative's October 17, 2005, reference 01, decision is modified as follows. The claimant was discharged from his assignment and from the temporary employment agency for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

jt/kjw