shift. Mr. Rinard worked just one night at Cardinal Glass. Mr. Rinard was scheduled to work on June 20, but did not appear for work on that night. When Mr. Rinard failed to appear at Cardinal Glass, Cardinal Glass contacted Advance Services to advise that Mr. Rinard had neither appeared nor notified Cardinal Glass of the need to be absent. Mr. Rinard had, in fact, telephoned Cardinal Glass at 10:45 p.m. on June 20 to indicate he was sick and would not be at work. On June 21, Office Manager Tracy Davis telephoned Mr. Rinard. Ms. Travis was not able to speak with Mr. Rinard at the time of her call, but left a message and Mr. Rinard called her back. Ms. Davis asked Mr. Rinard why he had not gone to work. Ms. Davis advised Mr. Rinard that his absence had been deemed a "no call, no show." Ms. Davis advised Mr. Rinard that, based on the absence, his assignment was ended. Ms. Davis did not mention the possibility of other assignments. Ms. Davis did not offer Mr. Rinard another assignment because of the "no call, no show." Though the call was brief, Ms. Davis could tell that Mr. Rinard was upset by the call.

Advance Services has a stand-alone written policy that required Mr. Rinard to contact the temporary employment agency within three days of the end of an assignment so as to notify the employment agency that he was available for a new assignment. Advance Services also has a policy that required Mr. Rinard to complete any assignment he accepted. This policy warned Mr. Rinard that the employer would deem any failure to complete an assignment a voluntary quit. This policy was set forth in writing in Advance Services' "Policies and Procedures," but also appeared in the above-referenced stand-alone policy. Included in the "Policies and Procedures" is a written attendance policy that required Mr. Rinard to notify the employment agency at least one hour prior to the scheduled start of a shift if he needed to be absent. Included in the "Policies and Procedures" is a written policy that Mr. Rinard could contact the agency the first day of an assignment to advise that the assignment was not working out. Mr. Rinard signed his acknowledgment of both documents on October 19, 2004.

During Mr. Rinard's first assignment through Advance Services, he had been a "no call, no show" on February 9, 2005 and March 28, 2005.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the evidence in the record establishes that Mr. Rinard voluntarily quit the assignment or was discharged.

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 from whom the employee has separated. See 871 IAC 24.25.

The weight of the evidence fails to establish that Mr. Rinard evidenced an intent to quit the assignment or committed an overt act carrying out that intent. Instead, the evidence establishes that Mr. Rinard called in sick on June 20 and was not allowed to return to the assignment thereafter. The administrative law judge concludes that Mr. Rinard did not quit, but was discharged from the assignment.

The next question is whether the evidence in the record indicates that Mr. Rinard was discharged from the assignment for misconduct.

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).

871 IAC 24.32(8) provides:

> (8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The evidence in the record establishes that Mr. Rinard was discharged from the assignment solely because he had missed one shift. Mr. Rinard had not followed Advances Services' policy to notify Advance Services of the absence and the absence was therefore an unexcused absence. Absence due to illness and other excusable reasons is deemed excused only if the employee properly notifies the employer. See Higgins v. Iowa Department of Job Service, 350 N.W.2d 187 (Iowa 1984) and 871 IAC 24.32(7). However, Mr. Rinard's one unexcused absence from the assignment did not constitute misconduct. See Sallis v. EAB, 437 N.W.2d 895 (Iowa 1989). The administrative law judge concludes that Mr. Rinard was discharged from the assignment for no disqualifying reason.

The next question is whether the evidence in the record establishes that Mr. Rinard voluntarily quit the employment relationship with Advance Services or was discharged.

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.

See also 871 IAC 24.26(15).

Though Ms. Davis made the first call on June 21 and left a message, the evidence indicates that Mr. Rinard initiated the second call that actually contained the discussion about his assignment being ended. Mr. Rinard learned from Ms. Davis that the assignment was ended and was in contact with Ms. Davis at the very moment he learned the assignment had ended. Mr. Rinard met his obligation under Iowa Code section 96.5(1)(j) of contacting the employer in a timely fashion. Mr. Rinard did not quit the employment. Instead, Ms. Davis made the decision not to discuss further assignments with Mr. Rinard because of the alleged “no call, no show” on June 20. In other words, Ms. Davis discharged Mr. Rinard from the employment relationship with Advance Services.

The remaining question is whether Mr. Rinard was discharged from the employment relationship with Advance Services for misconduct. The only misconduct alleged pertains to attendance.

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(7) provides:

> (7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

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).

In order for Mr. Rinard's absences to constitute misconduct that would disqualify him from receiving unemployment insurance benefits, the evidence must establish that his *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).

The evidence indicates that Mr. Rinard's absence on June 20 was an unexcused absence. The evidence further establishes that Mr. Rinard's "no call, no show" absences on February 9, 2005 and March 28, 2005 were also unexcused absences. Mr. Rinard had no other unexcused absences, including the entire period of March 29 through June 19. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Rinard's unexcused absences were not excessive. Mr. Rinard was discharged from Advance Services for no disqualifying reason and is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits paid to Mr. Rinard.

DECISION:

The representative's decision dated September 16, 2005, reference 02, is reversed. The claimant was discharged from the final assignment for no disqualifying reason. The claimant was discharged from the employment with the temporary employment agency for no disqualifying reason. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

jt/pjs