

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHANTEL M MAHOOD**  
Claimant

**APPEAL NO. 11A-UI-13708-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**L A LEASING INC  
SEDONA STAFFING**  
Employer

**OC: 07/31/11**  
**Claimant: Respondent (4-R)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 11, 2011, reference 03, decision that allowed benefits effective September 4, 2011, based on an Agency conclusion that the claimant was discharged for no disqualifying reason. After due notice was issued, a hearing was held on November 9, 2011. Claimant Chantel Mahood participated. Colleen McGuinty, unemployment insurance benefits administrator, represented the employer and presented additional testimony through Sharon Hagedorn, Cedar Falls branch manager. Exhibits A through E were received into evidence.

**ISSUES:**

Whether Ms. Mahood's September 2011 separation from her work assignment and from Sedona Staffing disqualifies her for unemployment insurance benefits. It does not.

Whether Ms. Mahood has been able to work and available for work since she established the additional claim for benefits that was effective September 4, 2011.

Whether Ms. Mahood has been overpaid benefits for the period beginning September 4, 2011.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a temporary employment agency. Chantel Mahood most recently started a work assignment through Sedona Staffing on August 8 or 9, 2011. Ms. Mahood's work hours in the assignment were 7:00 a.m. to 3:00 p.m., Sunday through Thursday. The assignment was a full-time, temp-to-hire assignment at Advanced Heat Treat. Ms. Mahood went home early due to illness on September 1, 2011, with the permission of her immediate supervisor at Advanced Heat Treat. That supervisor was Steven Hurley. Ms. Mahood immediately notified Sharon Hagedorn, Cedar Falls Sedona Staffing branch manager, that she had left her shift early due to illness. Ms. Mahood was next scheduled to work on Sunday, September 4, 2011. Ms. Mahood worked her whole shift. Ms. Mahood appeared for her shift on September 5, but left an hour early due to illness and with the permission of her immediate supervisor. Ms. Mahood notified Ms. Hagedorn that she had needed to leave work early due to illness.

Ms. Mahood was absent from her assignment on September 6 so that she could undergo medical evaluation at the University of Iowa Center for digestive diseases. Ms. Mahood had previously requested and been approved to have September 6, 2011 off for that purpose. After her September 6 appointments were done, Ms. Mahood contacted her supervisor at Advanced Heat Treat to advise him that the health care provider did not want her to return to work until September 8. Mr. Hurley approved Ms. Mahood's continued absence. Ms. Mahood was not aware that she needed to notify Sedona Staffing with this same information.

On September 8, a Human Resources Representative from Advanced Heat Treat, Gayla Hoppenworth, notified Sedona Staffing Branch Manager Sharon Hagedorn that Advanced Heat Treat was ending Ms. Mahood's assignment due to the attendance issues. Ms. Hoppenworth told Ms. Hagedorn that Ms. Mahood was a good worker, but that Advanced Heat Treat needed someone who could work full shifts and 40 hours per week. Ms. Hagedorn notified Ms. Mahood that the assignment was ended. Ms. Hagedorn told Ms. Mahood to let her know when her medical issues were resolved and then Sedona Staffing would look for other work for her.

Ms. Mahood has provided medical documentation concerning medical evaluation she received on September 6, 2011. Ms. Mahood has provided a medical excuse that indicates she needed to be off work September 6 and 7, but could return on September 8. Ms. Mahood has provided medical documentation, dated September 6, 2011, that indicates she would need to undergo further evaluation on September 22, 2011. Ms. Mahood has provided no medical documentation dated later than September 6, 2011. Ms. Mahood established an additional claim for benefits that was deemed effective September 4, 2011. Ms. Mahood has received unemployment insurance benefits for the period beginning September 4, 2011.

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

There are at least two separate sets of issues at play in this matter. The first concerns whether the September 2011 *separation* disqualifies Ms. Mahood for unemployment insurance benefits. The second, separate and distinct set of issues is whether Ms. Mahood has been *able to work and available for work* since she established the additional claim for benefits that was effective September 4, 2011. As much as the employer would like to conflate these sets of issues to argue a complete disqualification for benefits, Iowa law does not conflate the issues. Thus, the issues will be addressed separately herein.

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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.

There are only two types of separations that can disqualify Ms. Mahood for unemployment insurance benefits. The first is if Ms. Mahood was discharged for misconduct in connection with the employment that would disqualify her for unemployment insurance benefits. The second is if Ms. Mahood voluntarily quit the employment without good cause attributable to the employer. See Iowa Code sections 96.5(1) and (2)(a). A layoff would not disqualify Ms. Mahood for benefits. A permanent disability or a failure to meet the physical standards required would not disqualify Ms. Mahood for unemployment insurance benefits. The evidence fails to establish that Ms. Mahood voluntarily quit the assignment or the employment. The evidence fails to establish that Ms. Mahood had a permanent disability that prevented her from performing the work or that she was unable to meet the physical standards required of the job. Temporary illness, or even intermittent illness, does not establish an inability to meet the physical requirements. In any event, the weight of the evidence establishes that Ms. Mahood was discharged from the assignment and that this immediately led to a discharge from the employment with Sedona Staffing.

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 proving misconduct when the separation is based on a discharge. 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).

Both sides provided evidence of questionable reliability. Ms. Hagedorn and Ms. Mahood both confused dates or simply could not accurately remember significant dates. It was apparent during the hearing that Ms. Hagedorn had not kept accurate, complete records of her interactions with Ms. Mahood or of other important matters. Ironically, the dates Ms. Hagedorn testified to differed from the dates Ms. McGuinty testified were contained in the employer records. Though the employer might have had a written policy set forth in a brochure that referenced an employee's obligation to contact Sedona Staffing in the event of an absence, the evidence indicates that this is not the expectation communicated to Ms. Mahood through her regular contact with Sedona Staffing. Ms. Mahood reasonably concluded that she was to act as if Advanced Heat Treat was her employer in connection with attendance matters. This was reinforced by Ms. Hagedorn's practice of copying Ms. Mahood's medical excuses and other medical documentation so that Ms. Mahood could provide it to Advanced Heat Treat, without Ms. Hagedorn keeping a copy for Sedona Staffing records.

The evidence in the record indicates that Ms. Mahood was discharged from the assignment and from the employment in response to absences due to illness that were appropriately reported. The discharge was not based on misconduct and would not disqualify Ms. Mahood for unemployment insurance benefits. Ms. Mahood would be eligible for benefits in connection with the additional claim that was effective September 4, 2011, provided she meets all other eligibility requirements. The employer's account may be charged for benefits paid to Ms. Mahood.

The remaining set of issues pertains to Ms. Mahood's ability to work and availability for work since she established the additional claim for benefits that was effective September 4, 2011.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38,

paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(1)a and (2) provide:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Ms. Mahood has the burden of proving she has met the work ability and availability requirements during each week she has claimed unemployment insurance benefits. The determination of Ms. Mahood's ability to work and availability for work is a week-by-week determination. In light of the absence of medical documentation dated beyond September 6, 2011, the administrative law judge concludes there is insufficient evidence in the record upon which to base a decision on the claimant's work ability and availability beyond the benefit week that ended September 10, 2011. The weight of the evidence indicates that Ms. Mahood did not meet the work availability requirement during that week because she was not available for work with her regular employer for at least the majority of that week. See 871 IAC 24.23(29). Instead, Ms. Mahood was off work due to illness for the majority of that week. Thus, Ms. Mahood is not eligible for benefits for the week that ended September 10, 2011.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the

overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because Ms. Mahood was not available for work during the week that ended September 10, 2011, and therefore not eligible for benefits for that week, the \$141.00 in benefits she received for that week constitute an overpayment that Ms. Mahood must repay to Iowa Workforce Development.

Due to the lack of medical evidence dated beyond September 6, 2011, this matter will be remanded to the Claim's Division for appropriate investigation into and determination of Ms. Mahood work ability and availability since September 11, 2011. Ms. Mahood should be required to present medical documentation clearly stating her ability to work since September 11, 2011, including what medical restrictions, if any, apply. The remand should also address whether Ms. Mahood has been overpaid benefits for the period beginning September 11, 2011.

**DECISION:**

The Agency representative's October 11, 2011, reference 03, decision is modified as follows. The claimant was discharged for no disqualifying reason effective September 8, 2011. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged. The claimant was not available for work during the week that ended September 10, 2011, was not eligible for benefits for that week, and was overpaid \$141.00 for that week.

This matter remanded to the Claim's Division for investigation into and determination of the claimant's work ability and availability since September 11, 2011. This remand should also address whether the claimant has been overpaid benefits for the period beginning September 11, 2011.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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