

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDSEY M KURRLE
Claimant

APPEAL NO. 14A-UI-02644-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEAM STAFFING SOLUTIONS INC
Employer

OC: 04/07/13
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Lindsey Kurrle filed a timely appeal from the March 3, 2014, reference 03, decision that disqualified her for benefits. After due notice was issued, a hearing was held on April 1, 2014. Ms. Kurrle participated. Sarah Fiedler represented the employer.

ISSUE:

Whether the claimant separated from her temporary work assignment or from the employment with the temporary employment agency for a reason that disqualifies her for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Team Staffing Solutions is a temporary employment agency. Lindsey Kurrle performed work for the employer in a full-time temporary work assignment at Winegard Mobile from November 2013 until February 13, 2014, when Winegard Mobile ended the assignment due to interpersonal conflict between Ms. Kurrle and another employee. The interpersonal conflict originated outside of work. On February 10, 2014, the supervisor in the assignment directed Ms. Kurrle and the other employee to bring their concerns to the employer rather than confronting one another in the workplace. On February 13, 2014, Ms. Kurrle and the other worker were involved in another confrontation. Each blamed the other for the conflict. The supervisor decided to end the assignment.

On February 13, 2014, a Team Staffing Solutions representative notified Ms. Kurrle that the assignment was ended. Ms. Kurrle asserted that she had been harassed in the workplace and told the Team Staffing representative that she thought the employer would have been smart enough to figure that out. Ms. Kurrle made reference to contacting an attorney. The Team Staffing representative told Ms. Kurrle that she was not eligible for placement in additional assignments.

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 insufficient direct and satisfactory evidence, to establish misconduct in connection with the work assignment or the employment. The employer presented no testimony from anyone with personal knowledge concerning Ms. Kurrle's conduct in the assignment leading up to the client business' decision to end the assignment. Ms. Kurrle testified that she was being harassed. The employer, the party with the burden of proof in this matter, presented insufficient evidence to rebut Ms. Kurrle's testimony that she did not instigate or perpetuate the interpersonal conflict. Ms. Kurrle was upset when she was discharged from the work assignment and stated in frustration that she thought the employer was smart enough to figure out the nature of the interpersonal conflict. That comment and Ms. Kurrle's additional comment about consulting an attorney might have been lacking in tact, but they did not rise to the level of misconduct in connection with the employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Kurrle was discharged from the work assignment and from the employment no disqualifying reason. Ms. Kurrle is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The Agency representative's March 3, 2014, reference 03, decision is reversed. The claimant was discharged for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs