IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

JEANNE E HINDMAN Claimant **KELLY SERVICES INC** Employer	**APPEAL 15A-UI-08405-SC-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 04/26/15** **Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1)j – Voluntary Quitting – Temporary Employment

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 15, 2015, (reference 02) unemployment insurance decision that denied benefits based upon the determination she voluntarily left her temporary assignment without good cause attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on August 18, 2015. Claimant Jeanne Hindman participated on her own behalf. Employer Kelly Services, Inc. participated through Meghan Erhart.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full time as a temporary employee beginning January 13, 2014, and was separated from employment in June 2015. The employer sent the claimant on multiple temporary assignments which she satisfactorily completed.

At the end of May 2015, the claimant was sent to train in a claims specialist position at Trans America (TA) where she would be performing data entry and claims processing tasks. The claimant excelled during the first week of training which consisted of classroom training regarding claims. The second week of training consisted of training on the five computer programs and mainframe that the claimant would be using in the position. The claimant struggled with learning the computer component of the job. She was given additional individualized training from the instructor. On Thursday morning, after being given a mainframe training exercise, the claimant informed the instructor she did not grasp the information. The instructor told her that this job was not for everyone. The claimant left the assignment at lunch and turned in her badge.

That afternoon, the claimant called the employer to talk to them about the difficulty she had with the training and the job. The employer's representative asked the claimant if she would go back

if the employer were to arrange for one-on-one training. The claimant agreed. The following day, the employer emailed the claimant asking her if she had resigned her position. The claimant responded if TA said she resigned then, yes, she resigned. The employer conducted an internal review of the claimant's job performance. It determined based on her resignation from TA, she would not be sent on any more assignments.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job-related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

In this case, the employer made a decision to end its relationship with the claimant when it decided not to send her on any additional assignments. The sole reason for this decision was the resignation of her assignment when she felt she could not adequately do the job. The claimant could have handled the situation better by talking to the employer before walking out. However, that does not preclude her from receiving unemployment benefits. The conduct for which the claimant was discharged was an isolated incident of poor judgment and inasmuch as employer had not previously warned the claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning.

DECISION:

The July 15, 2015, (reference 02) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Stephanie R. Callahan
Administrative Law Judge

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Decision Dated and Mailed

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