

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VICTOR M. LANDAVERDE
Claimant

APPEAL 20A-UI-10211-BH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP, INC.
Employer

OC: 05/03/20
Claimant: Appellant (2)

Iowa Code section 96.5(1) – Voluntary Quit
Iowa Administrative Code rule 871-24.25 – Voluntary Quit Without Good Cause
Iowa Code section 96.5(1)(j) – Temporary Employees of Temporary Employment Firms
Iowa Code section 96.5(2)(a) – Discharge for Misconduct
Iowa Administrative Code rule 871-24.32(1)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

Victor M. Landaverde appealed the August 18, 2020 (reference 01) unemployment insurance decision that denied benefits. The agency properly notified the parties of the hearing. The undersigned presided over a telephone hearing on October 6, 2020.

Landaverde participated personally and testified. QPS Employment Group, Inc. (QPS) participated through employer representative Mai Lor and Jason Sheldahl, who testified and for all intents and purposes served as Landaverde's immediate supervisor with QPS at all times material hereto. CTS Language Link provided interpretation services.

ISSUES:

Was Landaverde a "temporary employee" under Iowa Code section 96.5(1)(j) at the time of his separation from employment with QPS?

Was Landaverde's separation from employment with QPS a layoff, discharge for misconduct, or voluntary quit without good cause attributable to the employer?

Did QPS discharge Landaverde for job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the undersigned finds the following facts.

QPS considers itself a temporary employment firm. It assigns its employees to work at other businesses. QPS classifies some of its employee assignments as short term and others as long term.

QPS has a contract with a company called G & R Industries. QPS employee assignments under its contract with G & R are open ended. QPS employees assigned to work for G & R have done so for upwards of 25 years.

QPS hired Landaverde on April 6, 2017. Landaverde worked full time as a tire mounter in tire production for G & R. QPS laid Landaverde off on May 8, 2020, because G & R reduced its workforce due to a decrease in demand caused by the COVID-19 pandemic.

Landaverde only worked at G & R during his time with QPS. Under the QPS-G & R contract, Landaverde's assignment was open ended, meaning it had no ending date. Landaverde was not assigned to G & R to supplement its workforce during absences, seasonal workloads, a temporary skill or labor market shortage, or for any special assignments or projects. Landaverde had a full time job on a specific line at G & R that he worked daily for over three years. And he would have continued working at G & R if COVID-19 had not hit because he was a good worker.

On January 20, 2020, QPS gave Landaverde a copy of its "3-Day Reassignment Policy," which states (sic):

Once you complete an assignment with a client, it is your duty to contact QPS for reassignment within three (3) working days as required by Iowa Code Section 96.5-1-j. Failure to report within three (3) days for reassignment without reasonable cause will indicate that you have quit working for QPS Employment Group. Furthermore, failure to seek reassignment may result in disqualification for unemployment benefits pursuant to Iowa Code section 96.5-1-j.

The policy is also translated into Spanish on the document. Landaverde signed the document, indicating he received a copy of the policy and understood it.

Because of COVID-19, G & R reduced employee hours to 20 or 30 per week because of a reduction in demand. The pandemic-caused demand shortage continued, which forced G & R to reduce its workforce by laying off workers. Sheldahl met with G & R, and learned Landaverde's position was being eliminated as part of the workforce reduction.

On May 8, 2020, Sheldahl informed Landaverde that G & R was laying employees off due to COVID-19. He told Landaverde that his position was being eliminated. Sheldahl gave Landaverde a card with his number on it and the general QPS office number. He instructed Landaverde to call the office to see if they had any other assignments for him.

Due to a miscommunication between Sheldahl and Landaverde believed he was going to take vacation time he had accrued for two weeks. QPS paid Landaverde for one weeks' worth of vacation.

On May 11 and May 12, 2020, Landaverde called QPS but got no answer. Sheldahl called the QPS office to see if they had any assignments for Landaverde. On May 14, QPS telephoned Landaverde with an assignment that was scheduled to begin on May 18, but the assignment fell through because the client cancelled the order for temporary workers.

Landaverde called QPS periodically after that, but QPS had no assignments for him because he is not bilingual. He also telephoned Sheldahl, who had no work for him, either.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes QPS discharged Landaverde from employment for no disqualifying reason.

Section 96.5(1)(j) governs claims where the claimant was a temporary employee working for a temporary staffing firm. This decision must therefore determine whether Landaverde was a temporary employee and whether QPS was a temporary employment firm under the statute at the time in question. If he was, section 96.5(1)(j) applies; if he was not, it does not govern.

Under Iowa Code section 96.5(1)(j)(3)(a), a temporary employee is “an individual who is employed by a temporary employment firm to provide services to clients to supplement their workforce during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.” Under section 96.5(1)(j)(3)(b), a temporary employment firm is “a person engaged in the business of employing temporary employees.

In the current case, the evidence establishes that Landaverde was not a “temporary employee” under the plain text of section 96.5(1)(j)(3)(a). QPS did not assign Landaverde to G & R to “supplement [its] workforce during absences, seasonal workloads, temporary skill or labor market shortages, [or] for special assignments and projections.” Rather, the QPS-G & R contract had no order date or end date for Landaverde’s assignment. He had a full-time job on a specific line that he worked for over three years and, according to Sheldahl, would have continued working had COVID-19 not decreased demand.

For these reasons Landaverde does not qualify as a temporary employee under the statutory definition in section 96.5(1)(j)(3)(a). The requirement in section 96.5(1)(j)(1) to notify an employer of the end of an assignment only applies to temporary employees under the section 96.5(1)(j)(3)(a) definition. Because Landaverde was not a temporary employee while assigned to work for G & R, section 96.5(1)(j)(1) does not apply to his claim for unemployment insurance benefits. Because Landaverde was not a temporary employee under the statutory definition, he cannot be deemed to have quit his job with QPS for failure to meet any of the requirements in section 96.5(1)(j)(1).

Iowa Code section 96.5(1) generally disqualifies a claimant from benefits if the claimant voluntarily quit employment without good cause attributable to the employer. Under rule 871-24.25, “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.” In the current case, there is no indication in the evidence that Landaverde intended to discontinue his employment with QPS because he no longer desired to remain in the relationship of an employee with QPS. This precludes a finding that Landaverde voluntarily quit his job under section 96.5(1).

The evidence shows that QPS and G & R jointly ended Landaverde’s assignment to work for G & R and considers it a “layoff.” That label notwithstanding, it is more likely than not that it constituted a discharge at the time of hearing because QPS refused to place Landaverde in an assignment. In appeals such as this one, the issue is not whether the employer made a correct decision in discharging 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).

Under Iowa Code section 96.5(2)(a), an individual is disqualified for benefits if the employer discharges the individual for misconduct in connection with the individual’s employment. The statute does not define “misconduct.” But Iowa Administrative Code rule 871-24.32(1)(a) does:

“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 Iowa Supreme Court has ruled this definition accurately reflects the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Administrative Code rule 871-24.32(4) states:

The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Under Iowa Administrative Code rule 871-24.32(8),

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.

Further, the employer has the burden of proof in establishing disqualifying job misconduct. *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 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).

There is no indication Landaverde did anything to motivate QPS ending his employment. QPS presented no evidence showing Landaverde did anything remotely wrong. To the contrary, Sheldahl testified credibly that Landaverde was a good worker who would have kept his job if COVID-19 had not hit. For these reasons, the evidence shows QPS discharged Landaverde for no disqualifying reason. Benefits are allowed, provided Landaverde is otherwise eligible.

DECISION:

The August 18, 2020 (reference 01) unemployment insurance decision is reversed. QPS discharged Landaverde from employment for no disqualifying reason. Benefits are allowed, provided Landaverde is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

A handwritten signature in black ink, appearing to read "Ben Humphrey", with a stylized flourish extending from the end.

Ben Humphrey
Administrative Law Judge

October 13, 2020
Decision Dated and Mailed

bh/scn