

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TAMEKA D ROGERS**  
Claimant

**APPEAL NO. 13A-UI-06447-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**L A LEASING INC  
SEDONA STAFFING**  
Employer

**OC: 05/05/13  
Claimant: Respondent (1)**

Section 96.5(2)(a) - Discharge

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 23, 2013, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on July 8, 2013. Claimant Tameka Rogers participated and presented additional testimony through Maurice Dotson. Colleen McGuinty represented the employer and presented additional testimony through Christa Rodriguez and James Cole.

**ISSUE:**

Whether Ms. Rogers separated from the employment 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: L A Leasing/Sedona Staffing is a temporary employment agency. The employer has a contract with Rock-Tenn Company in Iowa City to provide workers to Rock-Tenn. James Cole was L A Leasing/Sedona Staffing's Site Supervisor at Rock-Tenn. Christa Rodriguez is a L A Leasing/Sedona Staffing representative and works at the employer's Coralville office. Claimant Tameka Rogers performed work for L A Leasing/Sedona Staffing in a single work assignment at Rock-Tenn. The assignment was part time, 25 to 35 hours per week. Ms. Rogers began the assignment in September 2012 and last performed work in the assignment on May 8, 2013. Ms. Rogers' significant other, Maurice Dotson, also performed work for L A Leasing/Sedona Staffing at Rock-Tenn at the same time Ms. Rogers performed work in her assignment.

On May 5, 2013, Ms. Rogers complained to a Rock-Tenn supervisor, Travis, that she was being sexually harassed by a coworker. The coworker had suggested that Ms. Rogers meet him for a sexual tryst.

On or about May 7, there was another incident at Rock-Tenn that led to Mr. Dotson and Ms. Rogers leaving the workplace before the end of their shift. On that day, Ms. Rogers had packed a lunch for her and Mr. Dotson to eat during their lunch break at Rock-Tenn. At lunch

break, Ms. Rogers realized that she had forgotten to bring forks. Ms. Rogers knew that Rock-Tenn kept forks on hand. Ms. Rogers asked a Rock-Tenn Line Leader, Keith, for forks so that she and Mr. Dotson could eat their lunch. The Line Leader told Ms. Rogers there were no forks. Ms. Rogers then saw the same Line Leader provide another worker with a fork. Mr. Dotson made a comment that was overheard by the Line Leader and a verbal dispute between the Line Leader and Mr. Dotson followed. When Mr. Dotson walked into the men's room, the Line Leader followed to continue the dispute. Ms. Rogers and a coworker went to get the Site Supervisor, Mr. Cole. Mr. Cole intervened in the dispute taking place in the restroom. Mr. Cole directed Mr. Dotson to clock out and go home. Ms. Rogers elected to go home at the same time because they had driven to work together. After Mr. Dotson and Ms. Rogers departed the workplace, Mr. Cole telephoned Mr. Dotson. Ms. Rogers was still with Mr. Dotson. Mr. Cole spoke to Mr. Dotson and directed the pair to return. Both returned to work. After the shift was done, Mr. Cole sent Mr. Dotson a text message advising that neither Mr. Dotson nor Ms. Rogers were needed to work the next day. It was not unusual for L A Leasing/Sedona Staffing to call off workers if their services were not needed at Rock-Tenn on a particular day.

On May 8, 2013, Ms. Rogers contacted Christa Rodriguez at the L A Leasing/Sedona Staffing office in Coralville. Ms. Rogers repeated her complaint about being sexually harassed and told Ms. Rodriguez about the fork incident. Ms. Rodriguez reported the call to Mr. Cole. On that same morning, Ms. Rogers telephoned Mr. Cole and asked why she was not being allowed to return to work. Mr. Cole had already received an email message from Ms. Rodriguez alerting him to Ms. Rogers' earlier call and the need to follow up with Ms. Rogers with regard to the sexual harassment allegation. Ms. Rogers asked Mr. Cole whether he had been aware that she was being sexually harassed. When Mr. Cole said he was not aware, Ms. Rogers told Mr. Cole that shift supervisors and crew leaders had made inappropriate comments to her, that she had previously reported the problem, that she wanted the matter addressed and that she wanted to make sure she could return to work. Mr. Cole told Ms. Rogers that their discussion would have to wait until he finished with a meeting he was about to enter. Mr. Cole called Ms. Rogers back after his meeting. The conversation was brief. Mr. Cole told Ms. Rogers that he had just gotten out of his meeting and that he would have to make a decision about whether to keep her or fire her. Mr. Cole then ended the call.

On the same day Ms. Rogers called, Mr. Cole conducted a preliminary investigation into Ms. Rogers' allegation of sexual harassment. Mr. Cole concluded that Ms. Rogers had instigated most of the conversation that she was now complaining about and that the male coworkers had been responding to Ms. Rogers' comments. Mr. Cole made that conclusion without interviewing Ms. Rogers. Mr. Cole also concluded that inappropriate conversations initiated by Ms. Rogers had fueled Mr. Dotson's recent issues in the workplace. Mr. Cole got back to Ms. Rogers that same day and told her that there was insufficient evidence to support moving forward with a claim of sexual harassment. He asked Ms. Rogers whether she wanted to file a formal complaint. Ms. Rogers declined. Mr. Cole told Mr. Rogers that he had decided to end her employment. When Ms. Rogers asked why, Mr. Cole said he had received a lot of complaints about her. Ms. Rogers pointed out that she had not received any reprimands.

Mr. Dotson returned to his assignment at Rock-Tenn. Ms. Rogers did not. Mr. Dotson contacted Mr. Cole and asked him why Ms. Rogers' employment had been terminated. Mr. Cole said he was not going to get into the particulars. Mr. Dotson asked Mr. Cole how he was supposed to get to work now that MS. Rogers' employment had been terminated. Mr. Cole suggested that Mr. Dotson have Ms. Rogers drop him off at work.

## REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. 871 IAC 24.1(113)(c). A quit is a separation initiated by the employee. 871 IAC 24.1(113)(b). 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.

The employer ultimately has the burden of proving that Ms. Rogers is ineligible for benefits in connection with the separation from the employment. The administrative law judge notes the conspicuous absence of documentary evidence from the employer regarding the incidents that preceded Ms. Rogers' separation from the employment or the separation event itself. In the absence of such documentary evidence, generated at or about the time of the events in question, the employer has set up a "he said, she said" situation where the administrative law judge must decide the case and the credibility of Ms. Rogers and Mr. Cole based solely on what each and their supporters testify to from memory two months after the incidents that led to the separation.

The administrative law judge concludes that the evidence is insufficient to establish a voluntary quit. In doing so, the administrative law judge has concluded that Ms. Rogers' testimony concerning the final phone call with Mr. Cole was more credible than Mr. Cole's testimony concerning the phone call. The context of the call is important. Ms. Rogers had been told not to report to work that day. Ms. Rogers had recently complained to a Rock-Tenn representative about sexual harassment. Ms. Rogers was integral to the fork incident that resulted in Mr. Dotson and the Rock-Tenn Line Leader exchanging words. The weight of the evidence indicates that Ms. Rogers' presence in the workplace, and the allegation of sexual harassment, was creating tension between Rock-Tenn and Sedona Staffing. Mr. Cole's final call to Ms. Rogers occurred in the context of Mr. Cole performing a cursory, defective "investigation" of Ms. Rogers' complaint that did not involve speaking to Ms. Rogers in any detail. Mr. Cole had then reported his "findings" to Ms. Rogers and had asked her whether she wished to file a formal complaint right after telling her there was insufficient basis for a complaint. The weight of the evidence indicates that Mr. Cole had reason to want the employment relationship ended. The weight of the evidence indicates that Mr. Cole confirmed the discharge when he spoke to Mr. Dotson by telephone. The weight of the evidence establishes a discharge, not a voluntary quit.

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 a discharge 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) alone. 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 weight of the evidence fails to establish misconduct on the part of Ms. Rogers in connection with the employment. The employer has presented insufficient evidence, and insufficiently direct and satisfactory evidence, to establish that Ms. Rogers fabricated her complaint regarding sexual harassment. The employer has presented no testimony from any of the workers directly involved in the recent incident Ms. Rogers had complained about. The evidence does establish a single unexcused absence on or about May 7, 2013, when Ms. Rogers elected to leave with Mr. Dotson when he was sent home early because they had driven to work together. That absence did not involve and fraud, dishonesty or other aggravating factor and would not be sufficient to establish 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. Rogers was discharged for no disqualifying reason. Accordingly, Ms. Rogers is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The agency representative's May 23, 2013, reference 01, decision is affirmed. 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.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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