IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

MICHAEL C GADBERRY
Claimant

L A LEASING INC / SEDONA STAFFING
Employer

APPEAL NO: 10A-EUCU-00016-DT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/25/09
Claimant: Respondent (1)

Section 96.5-1-j – Temporary Employment
871 IAC 24.26(15) – Temporary Employment
Section 96.5-2-a – Discharge
Section 96.7-2-a(2) – Charges Against Employer's Account

STATEMENT OF THE CASE:

L A Leasing, Inc. / Sedona Staffing (employer) appealed a representative's December 29, 2009 decision (reference 01) that concluded Michael C. Gadberry (claimant) was qualified to receive unemployment insurance benefits after a separation from employment. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 17, 2010. The claimant participated in the hearing. Colleen McGuinty appeared on the employer's behalf and presented testimony from one other witness, Kathy Hutchinson. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct? Is the employer's account subject to charge?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant began taking assignments with the employer on September 1, 2009. His first and only assignment began on that date. He worked full time as a laborer/carpenter at the employer's Dubuque, Iowa area business client. His last day on the assignment was October 20, 2009. The assignment ended because the employer's business client determined to end it because of an altercation which occurred between the claimant and a coworker on October 16.

Toward the end of the shift on October 16 the claimant and his coworkers had been in a light-hearted mood. However, one of the coworkers was standing looking at some blue prints. The claimant commented to the coworker that he would get more done swinging a hammer than looking at the blue prints. The coworker took offense and came over and began yelling and pushing at the claimant. The claimant did not push back, but requested that the coworker calm

down. When the coworker continued to push the claimant, the claimant turned and walked away.

The business client became aware of this altercation on October 19. After discussion amongst management on October 20, the decision was made to release both employees. On October 21 the business client contacted the employer to indicate the claimant was being released from his assignment. Ms. Hutchinson, the area manager, contacted the claimant that day and informed him he was being removed from the assignment. The claimant indicated to Ms. Hutchinson that he was interested in reassignment to some other business client if work was available.

The claimant established an unemployment insurance benefit year effective January 25, 2009. After the separation from the employer, he reopened his claim by filing an additional claim effective October 25, 2009. The benefits he received after reopening his claim were all paid under the Emergency Unemployment Compensation program. He ceased receiving benefits after the week ending December 19 because he entered into new employment.

REASONING AND CONCLUSIONS OF LAW:

The essential question in this case is whether there was a disqualifying separation from employment. The first subissue in this case is whether the employer or the business client ended the claimant's assignment and effectively discharged her for reasons establishing work-connected misconduct as defined by the unemployment insurance law. The issue is not whether the employer or client was right or even had any other choice but to terminate the claimant's employment, but whether the claimant is entitled to unemployment insurance benefits. Infante v. IDJS, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what is misconduct that warrants denial of unemployment insurance benefits are two separate questions. Pierce v. IDJS, 425 N.W.2d 679 (Iowa App. 1988). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work-connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. Cosper v. IDJS, 321 N.W.2d 6 (Iowa 1982).

In order to establish misconduct such as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. 871 IAC 24.32(1)a; Huntoon v. Iowa Department of Job Service, 275 N.W.2d 445 (Iowa 1979); Henry v. Iowa Department of Job Service, 391 N.W.2d 731, 735 (Iowa App. 1986). The conduct must show a 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. 871 IAC 24.32(1)a; Huntoon, supra; Henry, supra. In contrast, 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. 871 IAC 24.32(1)a; Huntoon, supra; Newman v. Iowa Department of Job Service, 351 N.W.2d 806 (Iowa App. 1984).

The reason cited by the employer or its business client for ending the claimant's assignment is his involvement in the altercation with the coworker on October 16. Fighting at work can be misconduct. Savage v. Employment Appeal Board, 529 N.W.2d 640 (Iowa App. 1995). However, a discharge for fighting will not be disqualifying misconduct if the claimant shows 1) failure from fault in bringing on the problem; 2) a necessity to fight back; and 3) attempts to retreat if reasonably possible. Savage, supra. The claimant's statement to the coworker was not so clearly provocative as to put him at fault for bringing on the problem. He did not fight back, but rather did retreat. His involvement in the altercation was not misconduct, but was at worst the result of inefficiency, unsatisfactory conduct, inadvertence, or ordinary negligence in an isolated instance, or was a good faith error in judgment or discretion. The employer has not met its burden to show disqualifying misconduct. Cosper, supra. Based upon the evidence provided, the claimant's actions were not misconduct within the meaning of the statute, and the claimant is not disqualified from benefits.

The second subissue in this case is whether the claimant voluntarily quit by failing to affirmatively pursue reassignment. An employee of a temporary employment firm who has been given proper notice of the requirement can be deemed to have voluntarily quit his employment with the employer if he fails to contact the employer within three business days of the ending of the assignment in order to notify the employer of the ending of the assignment and to seek reassignment. Iowa Code § 96.5-1-j. The intent of the statute is to avoid situations where a temporary assignment has ended and the claimant is unemployed, but the employer is unaware that the claimant is not working could have been offered an available new assignment to avoid any liability for unemployment insurance benefits.

Where a temporary employment assignment has ended by the completion of the assignment of and the employer is aware of the ending of that assignment, the employer is already on "notice" that the assignment is ended and the claimant is available for a new assignment; where the claimant knows that the employer is aware of the ending of the assignment, he has good cause for not separately "notifying" the employer. 871 IAC 24.26(15).

Here, the employer was aware that the business client had ended the assignment; it considered the claimant's assignment to have been completed, albeit unsatisfactorily. More importantly, the claimant did seek reassignment immediately upon being notified by the employer of the ending of the assignment. After the initial attempt to obtain reassignment, the claimant is not required by the statute to remain in constant contact with the employer after the ending of an assignment in order to remain "able and available" for work for purposes of unemployment insurance benefit eligibility. The separation itself is deemed to be completion of temporary assignment and not a voluntary leaving. Benefits are allowed, if the claimant is otherwise eligible.

The employer is not charged for benefits paid to the claimant under the EUC program. An employer's account is only chargeable if the employer is a base period employer. Iowa Code § 96.7; Iowa Code § 96.19-3. Any chargeability would be determined at such point in the future that the claimant might be required to establish a new regular claim year, and then would depend on whether the wages paid by the employer to the claimant would be in the current base period for that claim year. The employer is not currently a base period employer and its account is not currently chargeable for benefits paid to the claimant.

DECISION:

The representative's December 29, 2009 decision (reference 01) is affirmed. The claimant did not voluntarily quit and the employer did effectively discharge the claimant but not for disqualifying reasons. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account is not subject to charge in the current benefit year.

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Lynette A. F. Donner
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs