

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

**AUTUMN ZOOK
APT 1
115 CENTRAL AVE
EVANSDALE IA 50707-1552**

**MASTERSON PERSONNEL INC
STE 200
3300 FERNBROOK LN N
PLYMOUTH MN 55447**

**JOSEPH G LYONS
ATTORNEY AT LAW
STE 600
607 SYCAMORE ST
WATERLOO IA 50613**

**AUTUMN ZOOK
9895 HIGHLAND CENTER RD
OTTUMWA IA 52501**

APPEAL NO. 21A-UI-13116-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APPEAL RIGHTS:

This Decision Shall Become Final, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of this exhibit, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

***Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
OR
Fax Number: (515)281-7191***

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

ONLINE RESOURCES:

UI law and administrative rules:

<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-law-and-administrative-rules>

UI Benefits Handbook:

<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-claimant-handbook>

Employer UI Handbook: <https://www.iowaworkforcedevelopment.gov/employer-handbook>

Report UI fraud: <https://www.iowaworkforcedevelopment.gov/report-fraud>

Employer account access and information: <https://www.myiowaui.org/UITIPTaxWeb/>

National Career Readiness Certificate and Skilled Iowa Initiative: <http://skillediowa.org/>

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

AUTUMN ZOOK
Claimant

APPEAL NO. 21A-UI-13116-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MASTERSON PERSONNEL INC
Employer

OC: 07/19/20
Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) - Discharge
Iowa Code Section 96.5(1)(j) – Separation From Temporary Employment

STATEMENT OF THE CASE:

The claimant, Autumn Zook, filed a timely appeal from the May 21, 2021, reference 01, decision that disqualified her for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on March 17, 2021 without good cause attributable to the employer. After due notice was issued, a hearing was held on August 6, 2021. Claimant participated personally and was represented by attorney Joseph Lyons. Jim Robertson represented the employer. Exhibits 1 through 4, A and B were received into evidence.

ISSUE:

Whether the claimant was laid off, discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Masterson Personnel, Inc. is a temporary employment agency. The claimant began her employment with Masterson in April 2019. At that time, the employer had the claimant sign a Notice of Obligation to Seek Reassignment. The stand-alone policy stated the claimant was required to contact the employer within three working days of completing an assignment to request a new assignment or the claimant would be deemed to have voluntarily quit and risk being disqualified for unemployment insurance benefits. The employer provided the claimant with a copy of the signed document.

On June 7, 2019, the claimant was working in a full-time temporary work assignment at Premiere Casting Services, Inc. when she suffered injury to her right hand. The claimant's hand got caught between a casting part and a grinding machine. The claimant is right-handed. The injury required medical attention. The medical provider to whom the employer initially sent the claimant took x-rays, prescribed medications, placed the claimant's hand and fingers in a brace, referred the claimant for physical therapy, and referred the claimant to another provider. The second medical provider referred the claimant to a surgeon.

The claimant underwent two surgeries to address what the claimant describes as a smashed hand. The first surgery occurred in August 2019 and the second surgery occurred in January 2020. From the time of the injury until March 11, 2021, the claimant was restricted from using her right hand. The claimant's workplace injury gave rise to a worker's compensation claim that was still pending at the time the claimant separated from the employment on March 12, 2021.

After the June 7, 2019 injury, the claimant initially returned to Premiere Casting for a week of light-duty. Masterson and Premiere then terminated that assignment and Masterson reassigned the claimant to work in the Masterson Waterloo office doing clerical work. The clerical assignment was full-time. The work hours were 8:00 a.m. to 4:30 p.m., Monday through Friday. Erin Wilmot, Masterson Personnel Waterloo Branch Manager, was the claimant's supervisor during the clerical assignment. Cheryl Fuller, Masterson Personnel Recruiter, acted as a substitute supervisor when Ms. Wilmot was away. The employer erroneously characterizes the office work as a continuation of the Premiere assignment. The office work was not a continuation of the Premiere assignment and was instead a separate long-term, temporary assignment.

During the period when the claimant was assigned to perform office work at the Masterson's office she underwent an additional surgery on her hand for carpal tunnel syndrome.

On Monday, March 11, 2021, the claimant participated in a Functional Capacity Evaluation (FCE) performed by an occupational therapist affiliated with Athletico. The occupational therapist deemed the claimant to have provided an inconsistent performance in the assessment and deemed the assessment invalid. Athletico notified the treating physician, Joseph Buckwalter, M.D., Ph.D., of the invalid assessment. Unbeknownst to Ms. Zook, the doctor had decided to release Ms. Zook to return to work without restrictions.

On March 12, 2021, the claimant reported to work the clerical assignment at Masterson office. Mr. Fuller was supervising the office that day. During the shift, Ms. Fuller told Ms. Zook she had just received a call from the head of Masterson human resources, Kelly Goodwater, who said the employer no longer had work for the claimant and the claimant's employment was terminated. The claimant asked whether Ms. Fuller was sure there were no other jobs for her. Ms. Fuller replied that Ms. Goodwater had stated there were no other jobs for the claimant. The employer made no reference to allegations of misconduct. The claimant signed a termination document and then involuntarily separated from the employment.

On March 30, 2021, Dr. Buckwalter released the claimant to return to work without restrictions, as follows:

Autumn Zook was under my care for her right carpal tunnel. She notably had a previous crush injury which I did not treat, and Ms. Zook requested to be placed at maximum medical improvement. She was last evaluated in February 23, 2021 and was released at maximum medical improvement (MMI) at that time. Ms. Zook underwent a functional capacity evaluation (FCE) at Athletico at on March 11, 2021 with John Kruzich OTR/L., which was deemed invalid/inconsistent performance. Based on my review of the invalid FCE, medical expertise and care and treatment of Ms. Zook's carpal tunnel syndrome I am releasing Ms. Zook with no restrictions for her right hand.

The claimant had not seen the medical release document until the employer provided it for the unemployment insurance appeal hearing.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871-24.1(113) characterizes the different types of employment separations as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 Iowa Administrative Code rule 871-24.25.

The evidence in the record establishes that the employer discharged the claimant from the clerical assignment in the Masterson office and from the employment on March 12, 2021. The claimant did not voluntarily separate from the employment. Iowa Code section 96.5(1)(j), regarding voluntary quits from temporary employment firms, does not apply.

Iowa Code section 96.5(2)(a) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

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).

The evidence in the record establishes a March 12, 2021 discharge for no disqualifying reason. The evidence indicates a discharge that was not based on any sort of misconduct on the part of the employer, but rather based on the employer's decision to no longer employ an employee who had been injured on the job. The employer presented no testimony from witnesses with personal knowledge of the matters in question and presented insufficient evidence to rebut the claimant's testimony. The employer's credibility was not helped by the employer's dubious assertion that the clerical assignment in the Masterson office was a continuation of the production assignment at Premiere. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The May 21, 2021, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The discharge was effective March 12, 2021. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

November 4, 2021
Decision Dated and Mailed

jet/scn