

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MASON B THOMASSON
Claimant

SWIFT PORK COMPANY
Employer

APPEAL NO. 20A-UI-11203-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/07/20
Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) - Discharge

STATEMENT OF THE CASE:

Mason Thomasson filed a timely appeal from the September 3, 2020, reference 01, decision that disqualified him for benefits and that relieved the employer of charge for benefits, based on the deputy's conclusion that the claimant voluntarily quit on January 31, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on November 3, 2020. Mr. Thomasson participated. Vicky Cervantes appeared for a portion of the hearing on behalf of the employer. During the claimant's testimony, Ms. Cervantes terminated her participation in the hearing without notice and in a manner that was disrespectful to the other parties present and disruptive of the hearing process. The administrative law judge had to stop the hearing for several minutes and made four unsuccessful attempts to conference Ms. Cervantes back into the hearing before the administrative law judge moved forward without the employer representative.

ISSUE:

Whether the claimant voluntary quit without good cause attributable to the employer.
Whether the claimant was discharged for misconduct in connection with the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by Swift Port Company/JBS as a full-time, third-shift, maintenance worker from March 2019 until January 31, 2020, when the employer discharged him from the employment. At several points throughout the employment, the claimant was the victim of coordinated harassment perpetrated by sanitation workers employed by Packer's Sanitation Services, Inc. (PSSI). The PSSI would spray the claimant with a high pressure hose, steal his tools, and progressed to repeatedly sabotaging his work. The claimant complained to his supervisor on multiple occasions, but the harassment continued. On January 28, 2020, the claimant happened upon a PSSI employee inside a protective cage around a machine the claimant was charged with maintaining. The PSSI employee was removing bolts from a piece of machinery. During the claimant's shift on January 30, 2020, the claimant became emotionally overwhelmed, left the production floor and retreated to a maintenance tool area for the remainder of his shift. The claimant left the workplace at the assigned time. When the claimant

reported for work on January 31, 2020, a manager summoned the claimant from the safety meeting. The claimant reported to the office. A manager told the claimant, "We can't have people walking off the job." The manager had the claimant turn over his lock-out/tag-out tools and escorted the claimant from the workplace.

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. Iowa Administrative Code rule 871-24.1(113)(c). A quit is a separation initiated by the employee. Iowa Administrative Code rule 871-24.1(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 Iowa Administrative Code rule 871-24.25.

The evidence establishes a discharge, rather than a voluntary quit. The employer did not present any evidence to rebut the claimant's testimony that he was discharged from the employment on January 31, 2020. The employer presented no evidence to rebut the claimant's testimony regarding the cumulative circumstances that led to the claimant leaving the production floor during his January 30, 2020 shift. The claimant did not in fact walk off the job. Rather, he went to a maintenance tool location within the employer's plant.

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 employer presented no evidence to rebut the claimant's testimony or to meet its burden of proving misconduct in connection with the employment. The evidence does not establish misconduct. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the claimant was discharged on January 31, 2020 for no disqualifying reason. Accordingly, the claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The September 3, 2020, reference 01, decision is reversed. The claimant was discharged on January 31, 2020 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in black ink on a light gray rectangular background.

James E. Timberland
Administrative Law Judge

December 3, 2020
Decision Dated and Mailed

jet/mh