

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**NICHOLAS L TRAPP**  
Claimant

**K R JONES ENTERPRISES INC**  
Employer

**APPEAL NO. 19A-UI-07148-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/18/19  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 4, 2019, reference 01, decision that allowed benefits to the claimant provided he met all other eligibility requirements and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on August 19, 2019 for no disqualifying reason. After due notice was issued, a hearing was held on October 2, 2019. Claimant Nicholas Trapp participated. Steve Clair represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

Whether the claimant voluntarily quit the employment without good cause attributable to the employer.

Whether the claimant voluntarily quit the employment for the sole purpose of accepting other, better employment.

Whether the employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Nicholas Trapp was employed by K.R. Jones Enterprises, Inc., doing business as CarX, as a full-time Store Manager at the employer's Ankeny location until August 19, 2019. Mr. Trapp began the employment in 2016 and became Store Manager in 2017. Steve Clair, General Manager, was Mr. Trapp's immediate supervisor. On August 19, 2019, a CarX corporate representative was at the Ankeny store to audit operations and observed Mr. Trapp deviate from the protocol for presenting a proposed repair job to a customer. Mr. Clair was also at the store that day, pointed out the deviation, and directed Mr. Trapp to comply. Mr. Trapp complied with the directive. Mr. Clair believed Mr. Trapp was a good manager, that the isolated protocol concern was out of

character for Mr. Trapp, and that Mr. Trapp might be suffering from burnout due to fast pace of the Ankeny store. Mr. Clair spoke with Mr. Trapp privately and asked whether Mr. Trapp was burnt out and whether he might prefer to run a less busy store. Mr. Trapp said he was burned out, that he would prefer to move to a different store, but that he had been offered better employment with another competitor. Mr. Trapp had not yet accepted the competitor's offer of employment. Mr. Clair asked Mr. Trapp whether Mr. Trapp thought it was a good idea to accept the other employment. Mr. Trapp said he thought it was a good idea. Mr. Clair asked Mr. Trapp when Mr. Trapp had planned to make Mr. Clair aware of the competitor's offer. Mr. Trapp told Mr. Clair that the employment, if Mr. Trapp accepted it, would begin in October 2019 and that Mr. Trapp had planned to provide a two-week notice on October 1, 2019. Mr. Trapp told Mr. Clair that he had first wanted to improve performance of the Ankeny store before he spoke to the employer about leaving the employment. Mr. Clair stated that he did not need a two-week notice and that August 19, 2019 would be Mr. Trapp's last day in the employment.

Shortly after Mr. Trapp separated from the employment, he accepted the offer from the competitor. Mr. Trapp viewed the new employment as better because the workplace was closer to his home and would not require weekend hours. The work for K.R. Jones Enterprises had required weekend 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. 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 weight of the evidence in the record establishes that Mr. Trapp was discharged from the employment. At the time Mr. Clair and Mr. Trapp spoke on August 19, 2019, Mr. Trapp had not yet accepted the offer from the competitor. The weight of the evidence establishes that Mr. Trapp did not provide a quit notice on August 19, 2019, but merely referenced October 1, 2019 as the date he would give a two-week quit notice if he accepted the new employment. Mr. Trapp did not engage in any overt act that would establish a quit. Instead, Mr. Trapp was at work performing his duties at the time he and Mr. Clair spoke. The employer elected to sever the employment relationship on August 19, 2019, based on the employer's assumption that Mr. Trapp would accept the competitor's offer and would within the next few months be leaving the employment.

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 discharge for no disqualifying reason. The employer readily states that Mr. Trapp was a good manager and that the employer did not view the August 19, 2019 concern as a basis for discharging Mr. Trapp from the employment. The employer's decision to discharge Mr. Trapp from the employment was based on Mr. Trapp's statement that he might be leaving the employment in October 2019 if he accepted the

competitor's offer. The evidence establishes a discharge that was not based on misconduct in connection with the employment. Accordingly, Mr. Trapp is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The September 4, 2019, reference 01, decision is affirmed. The claimant was discharged on August 19, 2019 for no disqualifying reason. The claimant is eligible for benefits, provided he 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

jet/rvs