

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**KAREN D FEHRMANN**  
Claimant

**CARE INITIATIVES**  
Employer

**APPEAL NO. 21A-UI-04345-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/15/20**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 22, 2021, reference 01, decision that allowed benefits to the claimant provided the claimant 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 November 16, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on April 7, 2021. Claimant participated. Alyce Smolsky represented the employer and presented testimony through Amy Castro and Kathy Grossnickle. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 1 through 4 into evidence. The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

**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 without good cause attributable to the employer.

Whether the claimant was overpaid benefits.

Whether the claimant must repay overpaid benefits.

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: The claimant was employed by Care Initiatives, doing business as Stratford Specialty Care, as a full-time housekeeper from 2006 and last performed for the employer on November 16, 2020. The employer deemed 30 hours per week to be full-time employment and enough to qualify the claimant for full-time benefits. The claimant generally worked thirty hours or more per week. The claimant was responsible for cleaning residents' rooms and bathrooms. There were approximately 25 resident rooms and at least 15 resident bathrooms. The claimant was also responsible for cleaning employee restrooms, two shower rooms, dining rooms, and hallways. The work the claimant performed was of satisfactory quality. One day per week, the claimant

assisted with laundry. The claimant's usual work days were Friday through Monday. The claimant would usually start work at 5:30 a.m. or 6:30 a.m. and work an eight-hour day. Jody Head, Housekeeping Supervisor, was the claimant's supervisor and performed duties similar to the claimant's duties. Amy Castro was the Administrator for about the last year of the claimant's employment.

Until November 12, 2020, the claimant would receive a 30-minute unpaid lunch break and was authorized to take two 15-minute paid breaks as business needs allowed. The claimant is a cigarette smoker. Rather than take a standard 15-minute break, the claimant would take a number of smoke breaks per shift. The claimant estimates that her smoking breaks would last about seven minutes. The claimant concedes there were times when she took breaks that totaled more than the two allowed 15-minute breaks, but adds that there were days when she took less breaks. On November 12, 2020, Ms. Castro conspicuously posted notice that the two housekeepers would thereafter no longer receive the paid 15-minute breaks and that their only break would be the 30-minute lunch break. Ms. Castro asserted there had been resident complaints about rooms not being cleaned. Ms. Castro stated that every resident room must be cleaned every day, though this was not feasible given the number of rooms to be cleaned, the cleaning duties to be performed in each room, and other assigned cleaning duties. Ms. Castro set forth other expectations on the posting and included two signature lines where the claimant and Ms. Head were expected to sign the posting. At the time Ms. Castro posted the list of directives, Ms. Head had been off work for a number of days due to a COVID-19 exposure, was not due to return for more than a week, and the claimant was only housekeeper on duty until Ms. Head's return.

On Friday, November 13, 2020, the claimant was absent due to illness and with proper notice to the employer.

The claimant encountered Ms. Castro's posting when she arrived for work on Saturday, November 14, 2020. The claimant was upset and embarrassed by the post and its conspicuous placement where other staff could peruse it. The claimant did not think the posting was fair and elected not to sign it. The claimant vented to a coworker and asserted that she would need to speak with Ms. Castro. The claimant performed her duties that Saturday, and returned on Sunday to complete her duties for that day. The claimant's Sunday duties included laundry duties for much of the day.

The claimant returned to work on Monday morning, did not complete her usual duties, and did not stay for the entire work day. Instead, the claimant checked with office staff to see how many total hours of combined work time and sick time she had accrued for the week. When the claimant learned she had completed 30 hour for her four-day work week, the claimant decided to clock out and go home for the day. While the claimant asserts she had been working shortened Monday shifts for about a month without the Ms. Head's knowledge and in light of the claimant taking on Sunday laundry duties, none of this information had been shared with Ms. Castro, who was the claimant's supervisor in Ms. Head's absence. The claimant clocked out between 9:00 a.m. and 9:15 a.m. The claimant had not checked to see what number of resident rooms were in need of cleaning or to what extent. The claimant was at her car preparing to leave, when Ms. Castro approached. The claimant said she was leaving for the day because she had her 30 hours in for the week. Ms. Castro told the claimant that she could not leave and that she needed to stay to perform her work duties. Ms. Castro escalated the matter by telling that claimant that if she left she would be terminated. The claimant left anyway. The claimant had not intended to quit the employment. Ms. Castro watched as the claimant drove a very short distance to Ms. Head's home and stopped to speak with Ms. Head. The

claimant reported to Ms. Head that she had just been fired. The employer declined to allow the claimant to return to the employment.

### **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 in the record establishes an employer-initiated discharge. The claimant left work early on November 16, 2020 without proper authorization and without completing her assigned work duties. The claimant explicitly stated that she was merely leaving for the day and provided her unreasonable justification for leaving early that day. The employer had recently taken unreasonable and unnecessarily punitive steps to substantially change the conditions of the employment by eliminating all paid breaks, by imposing the impossible standard that every resident room be cleaned every day, and by imposing this requirement when the claimant was the only housekeeper on duty. Rather than take reasonable steps to de-escalate the situation, the employer further escalated the situation by telling the claimant she was discharged if she left on November 16, 2020. In short, the employer created the problem, the problem played out in a predictable manner, and the employer then made the problem worse.

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).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See Iowa Administrative Code rule 871-24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See Iowa Administrative Code rule 871-24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Employers may not graft on additional requirements to what is an excused absence under the law. See *Gaborit v. Employment Appeal Board*, 743 N.W.2d 554 (Iowa Ct. App. 2007). For example, an employee's failure to provide a doctor's note in connection with an absence that was due to illness properly reported to the employer will not alter the fact that such an illness would be an excused absence under the law. *Gaborit*, 743 N.W.2d at 557.

The evidence in the record establishes a single unexcused absence, the one unauthorized early departure on November 16, 2020.

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform

a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

While the employer reasonably expected the claimant to stay and perform her duties on November 16, 2020, and while the claimant unreasonably refused to do so that day, the evidence does not establish any other instance in which the claimant unreasonably refused to follow a reasonable directive. In other words, there is not pattern of refusal.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the claimant was discharged for no disqualifying reason. Accordingly, the claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

The outcome of this case would have been the same if the evidence had established a voluntary quit based on the claimant's November 16, 2020 early departure. The employer had had substantially changed the conditions of the employment by suddenly eliminating the paid breaks, which not only deprived the claimant of the breaks that had been an established condition of the employment, but also effectively required the claimant to perform 30 minutes more work per day for the same paid. The employer had also substantially changed the conditions of the employment by imposing the requirement that every resident room be cleaned every day, an impossible task for one housekeeper to perform. See Iowa Code section 96.5(1) (regarding voluntary quits) and Iowa Admin. Code rule 871-24.26(1) (regarding voluntary quit for good cause due to substantial changes in the conditions of the employment).

**DECISION:**

The January 22, 2021, reference 01, decision is affirmed. The claimant was discharged on November 16, 2020 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

April 19, 2021  
Decision Dated and Mailed

jet/scn