IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

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

DANIEL P GONZALES
Claimant

ROSE ACRE FARMS
Employer

APPEAL NO. 19A-UI-01523-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 01/27/19
Claimant: Respondent (1)

Iowa Code Section 96.5(1) – Voluntary quit
Iowa Code section 96.5(2)(a) – Discharge for Misconduct
Iowa Administrative Code rule 871-24.32(9) – Suspension as Discharge

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 15, 2019, reference 01, decision that held the claimant was eligible for benefits provided he met all other eligibility requirements and the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant quit on January 24, 2019 for good cause attributable to the employer due to a change in the contract of hire. After due notice was issued, a hearing was commenced on March 6, 2019 and concluded on March 20, 2019. The hearing in this matter was consolidated with the hearing in Appeal Number 19A-UI-01524-JTT. Claimant Daniel Gonzales participated personally and was represented by attorneys Frank Harty and Katie Graham. Tami Ryerson represented the employer and presented additional testimony through Kathleen Baute. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant. Exhibits D-1 through D-19 were received into evidence regarding the overpayment issues. Exhibits 1 through 8, A through F, D-4 and D-5 were received into evidence regarding the separation issues.

ISSUES:

Whether Mr. Gonzales voluntarily quit on or about January 24, 2019 without good cause attributable to the employer.

Whether Mr. Gonzales was suspended and/or discharged for misconduct in connection with the employment that disqualifies him for unemployment insurance 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: Rose Acre Farms is an egg production business. Daniel Gonzales began his employment with Rose Acre Farms in April 2017 and last performed work for the employer on January 24, 2019. Mr. Gonzales worked at the employer's Winterset complex. From the start of the employment

until April 2018, Mr. Gonzales was a full-time general laborer assigned to the night shift, 5:00 p.m. to 1:30 a.m. In April 2018, Mr. Gonzales was promoted to the position of full-time Night Supervisor, with the work hours continuing unchanged. Mr. Gonzales' hourly wage as night supervisor was $20.00. As Night Supervisor, Mr. Gonzales supervised the eight to 10 employees who made up the night sanitation crew. The night sanitation crew was responsible for ensuring that the production equipment was cleaned and sanitized pursuant to United States Department of Agriculture requirements and company standards.

On January 24, 2019, the employer issued written discipline to Mr. Gonzales based on alleged insubordination and poor job performance. The alleged insubordination involved a purported change to an employee's documented work schedule, but Mr. Gonzales had not made the change in question. The poor work performance was based on quality control staff's allegations that machinery was not consistently properly cleaned. The discipline followed Mr. Gonzales' multiple complaints regarding harassment of particular members of the night sanitation crew by other Rose Acre employees. The incidents of harassment included sexual harassment perpetrated by a particular male employee, a patently racist statement uttered by a Caucasian employee in the presence of an African-American employee, and a harassing statement that a quality control worker directed at a pregnant member of the night sanitation crew. The discipline also followed Mr. Gonzales' complaint that the quality control employees were manipulating their daily reports and the timing of photo documentation of the workplace based on hostility toward the night sanitation crew. In connection with the discipline issued on January 24, 2019, the employer suspended Mr. Gonzales for three days and demoted him to egg grader on the day shift. The egg grader position was the lowest level position at the complex and would pay $13.50 per hour. The day shift hours were 6:30 a.m. to 2:30 p.m. Mr. Gonzales elected to separate from the employment, rather than acquiesce in the demotion and other changed conditions. Mr. Gonzales did not report for additional shifts. When Mr. Gonzales had not returned to work by February 5, 2019, the employer documented a discharge based on attendance.

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 administrative law judge will examine both the basis for the suspension and demotion as well as Mr. Gonzales' decision not to return to the employment following the demotion.

Iowa Administrative Code rule 871-24.32(9) provides as follows:

> Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

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 a suspension or discharge 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).

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).

The employer presented insufficient evidence to establish misconduct in connection with the employment. The employer witnesses lacked personal knowledge of the matters that factored in the discipline and demotion, aside from Ms. Ryerson's review of a clipboard that showed a change in an employee's documented work schedule. That review was not proof that Mr. Gonzales had made the change. The employer presented insufficient evidence to prove the other allegations and presented insufficient evidence to rebut Mr. Gonzales' credible assertion that the discipline was prompted by him raising concerns regarding ongoing harassment of his subordinates.

Iowa Code section 96.5(1) provides:

> An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.26(1) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. *Id.* An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See *Olson v. Employment Appeal Board*, 460 N.W.2d 865 (Iowa Ct. App. 1990).

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See 871 IAC 24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.,* 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d (Iowa 2005).

The weight of the evidence in the record establishes that Mr. Gonzales voluntarily quit the employment in response to substantial changes in the conditions of his employment. These changes included the demotion, the substantial reduction in pay, and the change in work hours. In addition, the demotion and the additional detrimental changes were sufficient to establish intolerable and detrimental working conditions that would have prompted a reasonable person to leave the employment. Mr. Gonzales' voluntary quit was for good cause attributable to the employer. Mr. Gonzales is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

DECISION:

The February 15, 2019, reference 01, decision is affirmed. The claimant voluntarily quit for good cause attributable to the employer. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs