

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**SEPTIMA L HOSKINS**  
Claimant

**APPEAL NO. 20A-UI-05540-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY SERVICES USA LLC**  
Employer

**OC: 04/05/20**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Septima Hoskins filed a timely appeal from the June 5, 2020, reference 03, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant voluntarily quit on December 13, 2019 without good cause attributable to the employer. After due notice was issued, a hearing was held on July 10, 2020. Ms. Hoskins participated. The employer did not provide a telephone number for the hearing and did not participate. Exhibits A through D were received into evidence.

**ISSUES:**

Whether the claimant voluntarily quit without good cause attributable to the employer.  
Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Septima Hoskins was employed by Kelly Services U.S.A., L.L.C. from October 2019 until December 13, 2019. During that time, Ms. Hoskins worked in a full-time assignment in which she provided technical support services for Apple. Ms. Hoskins performed her work from home on equipment provided by Kelly Services and/or Apple. The work was Internet-based. On December 10, 2019, Ms. Hoskins began to have issues with her connection to the VPN network she needed to use to perform her duties. An I.T. professional from Apple investigated the issue and determined it was an issue with the Internet Service Provider. Ms. Hoskins communicated with her supervisor regarding the lack of access to the VPN network and the outcome of the I.T. investigation of the issue. Ms. Hoskins promptly arranged for a service technician from the Internet Service Provider to come to her home to troubleshoot the problem, but the earliest available appointment was on December 16, 2019. In the meantime, Ms. Hoskins was unable to perform her regular duties. Ms. Hoskins initially used that down time to review job training materials, but then completely lost Internet access. Ms. Hoskins needed Internet access to communicate with her supervisor. When Ms. Hoskins attempted to communicate by phone, she was redirected to communicate via email, which was not possible at that time. On

December 13, 2019, Ms. Hoskins regained limited access to Internet. However, Ms. Hoskins supervisor had sent an email message terminating the employment based on Ms. Hoskins allegedly being absent without notice. The Internet issue turned out to be a broken wire in the Internet Service Provider's routing box outside Ms. Hoskins' home.

**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 a discharge, rather than a voluntary quit. Ms. Hoskins made no decision to leave the employment and took no overt steps to indicate any such intent. Rather, Ms. Hoskins was unable to communicate with the employer for a short period within the communication parameters set by the employer due to a loss of Internet, a situation outside Ms. Hoskins' control. The employer was aware of the issue, but erroneously asserted that Ms. Hoskins had been a no-call/no-show for work.

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 December 13, 2019 discharge for no disqualifying reason. The employer did not participate in the appeal hearing and presented no evidence to rebut Ms. Hoskins testimony and exhibits. The evidence established that Ms. Hoskins was not in fact absent and was merely unable to communicate with the supervisor for a brief period within the communication parameters set by the employer. The communication issue was no fault of Ms. Hoskins and outside her control. Ms. Hoskins is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

**DECISION:**

The June 5, 2020, reference 03, decision is reversed. The claimant was discharged on December 13, 2019 for no disqualifying reason. 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".

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James E. Timberland  
Administrative Law Judge

August 10, 2020  
Decision Dated and Mailed

jet/scn