

PUBLIC RECORD DECISION

IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

	68-0157 (9-06) - 3091078 - EI
CLAIMANT	APPEAL NO. 19A-UI-02742-JTT
EMPLOYER	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 03/03/19 Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 25, 2019, reference 02, decision that allowed benefits to the claimant provided she 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 February 6, 2019 for no disqualifying reason. After due notice was issued, a hearing was held on April 18, 2019. Claimant did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. The employer participated and presented testimony through three witnesses. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO), which record reflects that no benefits have been disbursed to the claimant in connection with the March 3, 2019 original claim. The administrative law judge took official notice the Agency's administrative record of the claimant's quarterly wages (WAGE-A).

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 employer's account may be charged.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer is a disabled adult whose disabilities include a learning disability, bipolar disorder, and intermittent explosive disorder. The employer's grandmother is the employer's legal guardian. Grandmother and granddaughter reside in the same household. The employer is an Iowa Medicaid participant. The employer participates in Iowa Medicaid's Consumer Choices Option program whereby the employer directly hires home and community based support personnel to assist her with living as independently as possible. Veridian Fiscal Solutions handles payroll matters on behalf of Iowa Medicaid and the employer in connection with the employer's participation in the Consumer Choices Option program. An Iowa Medicaid managed care organization (MCO) caseworker provides guidance and input to the employer in connection with the employer's participation in the Consumer Choices Option program.

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With the assistance of the MCO caseworker, the employer hired the claimant in October 2018 to provide home and community based support to the employer on a part-time basis. The claimant was hired to assist the employer with completing a general education diploma (GED), with mastering use of a clock/telling time, and with venturing out into the community to volunteer and engage in other community-based activities.

The claimant's employment ended when the employer's guardian discharged the claimant from the employment. The exact date of the discharge is less than clear. The employer's guardian does not know the date of the last day of the employment. Veridian documented the last day of work for which the claimant was paid as December 31, 2018. The claimant may have worked beyond that date without submitting payroll documentation to Veridian.

The employer's guardian discharged the claimant in immediate response to the claimant verbally abusing the employer. At a time when the claimant was supposed to be assisting the employer with mastering math in connection with the employer's work on her GED, the claimant repeated yelled at the employer, "You figure it out!" The claimant yelled about Jesus Christ and yelled that the employer had the devil inside of her, in other words that the employer's disabilities were caused by demon possession. The employer's guardian was present for the claimant's yelling, recognized the yelling as verbal abuse of a dependent adult, and directed the claimant to stop. The employer's guardian reminded the claimant that the claimant was there to assist the employer, not to preach to the employer. The employer's guardian then directed the claimant to leave. After the employer's guardian directed the claimant to leave, the claimant said she was done and left the employer and guardian's home. The claimant had on at least two prior occasions engaged in similar verbally abusive religious ranting directed at the employer. After the final incident, the claimant returned only for the purpose of collecting a table she had left at the employer's residence.

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 the employer's guardian discharged the claimant from the employment when the guardian directed the claimant to leave the employer's and guardian's home immediately following the final incident.

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:

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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 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).

An employer has the right to expect decency and civility from its employees and an employee's use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct disqualifying the employee from receipt of unemployment insurance benefits. *Henecke v. Iowa Department of Job Service*, 533 N.W.2d 573 (Iowa App. 1995). Use of foul language can alone be a sufficient ground for a misconduct disqualification

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for unemployment benefits. *Warrell v. Iowa Dept. of Job Service*, 356 N.W.2d 587 (Iowa Ct. App. 1984). An isolated incident of vulgarity can constitute misconduct and warrant disqualification from unemployment benefits, if it serves to undermine a superior's authority. *Deever v. Hawkeye Window Cleaning, Inc.*, 447 N.W.2d 418 (Iowa Ct. App. 1989).

The weight of the evidence in the record establishes a discharge for misconduct in connection with the employment. The claimant repeatedly directed offensive, verbally abusive speech at the employer. The conduct was in willful and wanton disregard of the employer's interests and directly at odds with the purpose of the employment. The claimant had been hired to assist and support the employer. The claimant's conduct in connection with these repeated verbally abusive episodes harassed and harmed the employer based on the employer's disabilities.

Because the evidence establishes a discharge for misconduct in connection with the employment, the claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

Because no unemployment insurance benefits have been disbursed in connection with the claim, there is no overpayment issue to address.

DECISION:

The March 25, 2019, reference 02, decision is reversed. The claimant was discharged for misconduct in connection with the employment. For requalification purposes, the effective date of the separation was December 31, 2018. The claimant is disqualified for unemployment benefits until she has worked in and been paid wages for other insured work equal to ten times her weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs