

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**IVORY JONES**  
Claimant

**WHIRLPOOL CORPORATION**  
Employer

**APPEAL 20A-UI-14790-DZ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/09/20**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quit

**STATEMENT OF THE CASE:**

Ivory Jones, the claimant/appellant, filed an appeal from the November 2, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 15, 2021. Mr. Jones participated and testified. The employer did not participate.

**ISSUE:**

Was Mr. Jones laid off, discharged for misconduct or did he voluntarily quit without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Jones began working for the employer on November 16, 2019. He worked as a full-time line assemblyperson. His last day of work was in early August 2020.

On August 10, 2020, a derecho swept through Iowa. The storm damaged Mr. Jones' car to the point that he couldn't drive it. Mr. Jones called the employer's automated call in line each day to report that he wasn't able to be at work. On, or about, September 5, when Mr. Jones called the employer's automated line, his employee ID no longer worked. Mr. Jones called the employer's human resources department multiple times and each time was not able to get ahold of anyone or leave a voice message.

Prior to the derecho, Mr. Jones had been given a verbal warning and a written warning for absences. The employer policy provides that absences would result in a verbal warning, written warning then discipline up to termination. Based on his prior write ups and the fact that his employee ID no longer worked on the employer's automated call in line, Mr. Jones assumed he no longer had a job with the employer.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Jones was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

871 IAC 24.32(4) provides:

Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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....

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The employer did not participate in the hearing and provided no evidence of misconduct by Mr. Jones. Mr. Jones admits that he absent after the derecho but denies that it was for misconduct. The employer has not met its burden in establishing disqualifying job misconduct. Benefits are allowed.

**DECISION:**

The November 2, 2020, (reference 01) unemployment insurance decision is reversed. Mr. Jones was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



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February 2, 2021  
Decision Dated and Mailed

dz/scn