

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

---

**SYLVIA GUNTER**  
Claimant

**PER MAR SECURITY & RESEARCH CORP**  
Employer

**APPEAL NO. 20A-UI-00664-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/22/19**  
**Claimant: Respondent (1)**

---

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 13, 2020, reference 01, decision that held the claimant was eligible for benefits provided he met all other eligibility requirements and that employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on December 10, 2019 for no disqualifying reason. After due notice was issued, a hearing was held on February 6, 2020. Claimant Sylvia Gunter participated. Kevin Link represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 7, 9, 12, 15 and 17 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 employer's account may be charged.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Sylvia was employed by Per Mar Security & Research Corporation as a full-time Service Coordinator from 2007 until December 10, 2019. At the time, Ms. Gunter separated from the employment, Kevin Link, Senior Technical Services Manager, was Ms. Gunter's immediate supervisor. Ms. Gunter's work hours were 8:00 a.m. to 5:00 p.m., Monday through Friday. During the employment, Ms. Gunter resided with her boyfriend and their nine-year-old child at her boyfriend's home in Davenport. During the employment, Ms. Gunter and her boyfriend shared a vehicle. Ms. Gunter last appeared for work on Friday, December 6, 2019. On Monday, December 9, 2019, Ms. Gunter was absent due to the need to care for her sick child and properly notified the employer. Ms. Gunter was next scheduled to work on Tuesday, December 10, 2019.

The situation that led to Ms. Gunter's separation from the employment unfolded on December 10, 2019. Prior to that shift, Ms. Gunter's boyfriend threw Ms. Gunter into crisis by failing to return home and failing to communicate with Ms. Gunter. Ms. Gunter understood that her boyfriend's failure to return to the family's home and failure to communicate meant that the couple were splitting and that Ms. Gunter needed to immediately find a new home for herself and her child. Two hours before the scheduled start of her shift, Ms. Gunter sent a text message to Mr. Link to let him know that she was facing possible homelessness, might have to quit the employment to move to live with family in North Carolina, needed a leave of absence, and needed to know as soon as possible whether a leave of absence could be approved. Ms. Gunter spoke with Mr. Link by telephone over the noon hour on December 10. Ms. Gunter repeated the information she had provided in her text message. Mr. Link did not respond to Ms. Gunter's inquiry about a leave of absence. Mr. Link told Ms. Gunter he supported the idea of her moving to North Carolina. After the call, a coworker notified Ms. Gunter that Mr. Link had cleaned out her desk and boxed her personal effects. Ms. Gunter called Mr. Link. Ms. Gunter asked whether she was fired. Mr. Link asserted that Ms. Gunter had quit during the earlier phone call and that he had accepted her resignation. Ms. Gunter again inquired about a leave of absence. Mr. Link told Ms. Gunter the separation paperwork had been completed and that a leave of absence was not possible. Ms. Gunter then contacted a Per Mar human resources representative who asserted that Ms. Gunter had been discharged for attendance and was barred from rehire.

Ms. Gunter was able to quickly resolve her housing and transportation issues by moving in with her sister, who resides in Rock Island, Illinois. On or before December 20, 2019, Ms. Gunter contacted Per Mar Security to request 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 weight of the evidence establishes a discharge, not a voluntary quit. The weight of the evidence establishes that Ms. Gunter contacted the employer on December 10, 2019 to give proper notice for her absence from the workplace that day, to give notice of her family, housing, and transportation crisis, and to discuss her options with the employer. The weight of evidence fails to support the employer's assertion that Ms. Gunter voluntarily quit during the first telephone call that day. Ms. Gunter's personal effects were still at the workplace. Ms. Gunter had asked for a leave of absence so that she could address her crisis situation. As soon as Ms. Gunter learned that the employer had interpreted the telephone contact as a quit and had promptly cleaned out her desk, Ms. Gunter promptly contacted the employer to clarify her intention to remain attached to the employer. The employer declined to continue that discussion.

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 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).

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 discharge for no disqualifying reason. Ms. Gunter's absence on December 10, 2019 was due to circumstances beyond her control. Ms. Gunter took reasonable steps to notify the employer of her circumstances well before the shift. The absence was an excused absence under the applicable law. The absence on December 9, 2019 was due to the illness of Ms. Gunter's child, was properly reported to the employer, and was an excused absence under the applicable law. These absences do not provide a basis for disqualifying Ms. Gunter for unemployment insurance benefits. Ms. Gunter is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

If the evidence had indicated a voluntary quit, the quit would have been for good cause attributable to the employer. Iowa Code section 96.5(1)(f) 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. But the individual shall not be disqualified if the department finds that:

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

Ms. Gunter had compelling reasons for being away from the employment on December 10, 2019 and in the day that followed. Within 10 days of the separation, after the compelling circumstances had sufficiently resolved, Ms. Gunter contacted the employer to request employment.

**DECISION:**

The January 13, 2020, reference 01, decision is affirmed. The claimant was discharged on December 10, 2019 for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/scn