

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEVEN KNECHT
Claimant

CITY OF SIOUX CITY
Employer

APPEAL 20A-UI-05295-HP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/19/20
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.5(2) – Discharge due to Misconduct

STATEMENT OF THE CASE:

Claimant Steven Knecht filed an appeal from a June 1, 2020 (reference 01) unemployment insurance decision that denied benefits based upon his voluntarily quitting work without good cause attributable to the employer, City of Sioux City (“City”). Notices of hearing were mailed to the parties’ last known addresses of record for a telephone hearing scheduled for July 1, 2020. Knecht appeared and testified. Amber Hegarty appeared on behalf of the City. I also took administrative notice of Knecht’s unemployment insurance benefits records maintained by Iowa Workforce Development.

ISSUE:

Did the claimant voluntarily quit the employment with good cause attributable to the employer?

FINDINGS OF FACT:

Knecht commenced his employment as a full-time automotive operator 1 with the City on July 10, 2017. Knecht worked for the street department, filling potholes, operating machinery, and operating a snow route in the winter. Patrick Simmons was his direct supervisor.

Knecht and his wife are involved in a divorce proceeding. Knecht’s wife assaulted him and she was arrested. Knecht missed work due to the stress. He was diagnosed with anxiety and he was experiencing problems with his blood pressure. Knecht called his coworkers and supervisor outside of normal working hours to discuss his problems.

The City offered Knecht family medical leave in February 2020. Knecht continued to work.

On or about April 17, 2020, the City held a pre-termination/pre-discipline meeting with Knecht. Jodi Heineman in human resources, Hegarty, an assistant City attorney, Simmons, Ed Pickens, the street superintendent, Janelle Bertrand, the director of human resources, David Carney, the public works director, Knecht and Christa Hardy, a union representative, attended the meeting. Hegarty testified Knecht’s supervisors believed he should be terminated because he was experiencing personal issues that were affecting his work performance and the work performance of his coworkers due to concerns they had for his safety.

If an employee is terminated, the employee is not eligible for rehire for five years. The City told Knecht if he resigned, he could reapply for a position with the City in the future. Knecht agreed to resign during the meeting. Knecht's resignation was effective April 24, 2020.

REASONING AND CONCLUSIONS OF LAW:

In *Flesher v. Iowa Department of Job Service*, 372 N.W.2d 230 (Iowa 1985), the claimant resigned when given the choice to resign or be discharged. The employer protested as a voluntary quit. The agency disqualified the claimant based on misconduct. The Employment Appeal Board has taken the position that a resignation in lieu of discharge should be analyzed as a discharge and that if misconduct appears, a disqualification can be imposed. *Wearda v. Securitas Security SVCS USA*, 19A-UI-04287-EAB.

Iowa Code Section 96.5(2)(a) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 Iowa Administrative Code 24.32(1)(a) defines misconduct 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 the 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.

The Iowa Supreme Court has held this definition "accurately reflects the intent of the legislature." *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d, 445, 448 (Iowa 1979).

The employer bears the burden of proving the employee engaged in disqualifying misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 11 (Iowa 1982) The issue is not whether the employer made a correct decision in separating the claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262, 264 (Iowa Ct. App. 1984)

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,"

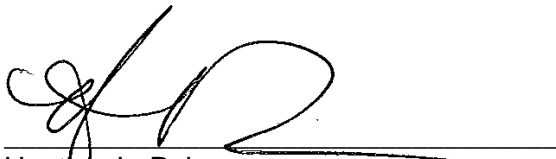
the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See *Greene v. Emp't Appeal Bd*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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).

Knecht was experiencing personal problems. He agreed his problems were affecting his work performance. The City avers he resigned in lieu of being discharged because his personal problems were affecting his work performance and those of his coworkers. There was no evidence presented that the City had previously warned Knecht his behavior could result in immediate discharge. The City did not present evidence of how Knecht's personal problems were affecting his ability to perform his work or that of his coworkers. The City did not provide specific examples supporting Knecht engaged in disqualifying misconduct. I find the City failed to meet its burden of proof Knecht engaged in disqualifying misconduct. Benefits are allowed, provided Knecht is otherwise eligible.

DECISION:

The June 1, 2020 (reference 01) unemployment insurance decision denying unemployment insurance benefits is reversed in favor of the claimant/appellant. Benefits are allowed, provided the claimant is otherwise eligible.



Heather L. Palmer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

July 13, 2020
Decision Dated and Mailed

hlp/sam