

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CALVIN D JENNINGS**

Claimant

**APPEAL 21A-UI-14659-ML-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WHIRLPOOL CORPORATION**

Employer

**OC: 04/04/21**

**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the June 22, 2021 (reference 01) unemployment insurance decision that denied benefits based upon his voluntarily quitting work without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on August 6, 2021. The claimant participated personally. The employer, Whirlpool Corporation, registered a telephone number; however, the employer was unavailable when the administrative law judge called the registered number. As such, the employer did not participate.

Claimant's Exhibit 1 was offered and accepted into the evidentiary record.

**ISSUE:**

Did claimant voluntarily quit the employment with good cause attributable to employer?  
Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an operator since March 18, 2019. His employment ended when he failed to report to work for three consecutive shifts, beginning on March 15, 2021. The June 22, 2021, decision lists the date of separation as March 31, 2021.

Claimant did not report to work between March 15, 2021, and March 24, 2021. During these two weeks, claimant was at home caring for his sick fiancé and children. Claimant called the Whirlpool "call-in" line on March 15, 2021, and March 16, 2021; however, no one answered his calls, and the calls never transferred to a voice messaging system. Claimant testified that other employees had run into similar issues with the call-in line in the past.

When he and his family had recovered, claimant reported to work on March 25, 2021. Upon his arrival, claimant spoke to his supervisor, Tracy Hardy. Ms. Hardy asked claimant what he was doing at work and how did he get into the building. Claimant told Ms. Hardy that he got into the building by using his badge just like he normally would. He then explained to Ms. Hardy why he had been absent from work. Ms. Hardy told claimant that he had been terminated for three (3)

no call/no shows. Ms. Hardy instructed claimant to go ahead and work his shift, but he would need to speak with Human Resources at some point. Claimant returned to work on March 26, 2021, and presented to the Human Resources and Scheduling departments. Claimant was instructed to turn in his badge and leave the premises while the scheduling department looked into his employment status. The employer told claimant that someone would contact him with the results of the investigation on March 31, 2021. Claimant testified he has not received a call regarding his employment status to date.

The employer did not submit any evidence or provide any rebuttal testimony at hearing.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code §96.5(1) provides:

An individual shall be disqualified for benefits:

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.

Iowa Admin. Code r. 871-24.26(8) provides:

The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(8) The claimant left for the necessary and sole purpose of taking care of a member of the claimant's immediate family who was ill or injured, and after that member of the claimant's family was sufficiently recovered, the claimant immediately returned and offered to perform services to the employer, but no work was available. Immediate family is defined as a collective body of persons who live under one roof and under one head or management, or a son or daughter, stepson, stepdaughter, father, mother, father-in-law, mother-in-law. Members of the immediate family must be related by blood or by marriage.

Iowa Code § 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.

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).

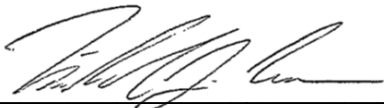
A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In this case, claimant was absent from work from March 15, 2021, through March 24, 2021. Claimant called in and attempted to notify the employer that he needed to take care of his sick family members and would not be able to work until they had recovered. Given that the employer did not participate in the hearing, claimant's testimony is unrebutted. As such, I accept claimant's testimony as credible and find claimant attempted to contact the employer regarding his status. Once claimant's family members were sufficiently recovered, he immediately returned to work and offered to perform services for the employer. The employer allowed claimant to work one more day; however, he was subsequently dismissed from the premises. It is unclear whether continuing work was available. At the very least, it can be said the employer did not have work available for claimant. Claimant qualifies for benefits under Iowa Admin. Code r. 871-24.26(8)

Alternatively, if work was available for claimant, this case would be analyzed as a discharge from employment, likely for excessive unexcused absenteeism. However, the employer did not participate in the hearing and provided no evidence to establish misconduct on the part of Mr. Jennings. The employer has failed to meet its burden. Benefits are allowed.

**DECISION:**

The June 22, 2021 (reference 01) unemployment insurance decision is reversed. The claimant's separation from employment was not disqualifying. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



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Michael J. Lunn  
Administrative Law Judge  
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Des Moines, Iowa 50319-0209  
Fax (515)478-3528

August 11, 2021

Decision Dated and Mailed

mjl/kmj