

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RORY J NIEBUHR
Claimant

APPEAL 18A-UI-03625-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION
Employer

OC: 02/25/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 16, 2018 (reference 01) unemployment insurance decision that denied benefits based upon claimant voluntarily quitting without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on April 12, 2018. The claimant, Rory J. Niebuhr, participated personally. The employer, Whirlpool Corporation, did not participate. Claimant's Exhibit A was admitted.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as Master Lab Technician. He began working for this employer on June 2, 1980 and his employment ended on January 31, 2018. His job duties included working on design and development of the employer's products.

The employer was in the process of reducing staff due to lack of work. The employer offered claimant a separation package that included a waiver and release agreement. See Exhibit A. There was no continuing work available if the claimant had not agreed to accept the separation package. Claimant had no previous disciplinary warnings issued to him.

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 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).

First, it must be determined whether claimant quit employment. 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).

In this case, there was no continuing work available to the claimant if he had not accepted the separation agreement, as the employer was downsizing due to lack of work. The employer has the burden to prove that the claimant is disqualified for benefits pursuant to § 96.5, except as provided by subsection 96.6(2). Iowa Code § 96.6(2). The employer failed to meet its burden of proof to establish the separation was disqualifying pursuant to Iowa Code § 96.5. As such, benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The March 16, 2018 (reference 01) unemployment insurance decision is reversed. Claimant's separation from employment was not disqualifying. Benefits are allowed, provided he is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs