

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

WYATT W VANZUUK
Claimant

APPEAL NO. 20A-UI-05024-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PER MAR SECURITY & RESEARCH CORP
Employer

OC: 04/05/20
Claimant: Respondent (1)

Iowa Code Section 96.5(2)(a) - Discharge

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 22, 2020, reference 01, decision that held the claimant was eligible for benefits, provided he met all other eligibility requirements, and that the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on March 16, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on July 1, 2020. Claimant Wyatt Vanzuuk participated and presented additional testimony through Casey Vanzuuk. Mike Lovell represented the employer. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBRO and KPYX).

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment.
Whether the claimant voluntarily quit the employment without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Wyatt Vanzuuk was employed by Per Mar Security as a full-time security officer. Mr. Vanzuuk began the employment in October 2019 and last performed work for the employer during an overnight shift that started on March 9, 2020 and that was scheduled to end on the morning of March 10, 2020. Mr. Vanzuuk was assigned to provide security services at an EMC Insurance site in downtown Des Moines. Mr. Vanzuuk's work hours were 10:00 p.m. to 6:00 a.m. Mr. Vanzuuk usually had Thursdays and Fridays off and worked the other days of the week. Several people exercised supervisor authority over Mr. Vanzuuk's employment. These included Site Supervisor Orrin Boley, Operations Manager Mike Lovell and various field supervisors, including Chris Jones and Jill (last name unknown). Due to the overnight work hours, Mr. Vanzuuk's primary contacts were the field supervisors.

Mr. Vanzuuk became ill midway through the shift that started at 10:00 p.m. on Monday, March 9, 2020. Mr. Vanzuuk called his mother, Casey Vanzuuk, for guidance. Mr. Vanzuuk is 19 years old, has pronounced anxiety issues, and resides with his parents. Mrs. Vanzuuk

advised Mr. Vanzuuk to call whomever he was supposed to call to indicate his need to leave work due to illness. Mr. Vanzuuk called Field Supervisor Chris Jones. Mr. Vanzuuk told Mr. Jones that he was ill and needed to leave work. Under the employer's policy, Mr. Vanzuuk was required to remain at his post until a replacement security officer arrived to relieve him. Mr. Vanzuuk vomited into a wastebasket while he waited an hour or more for a replacement to arrive. After a replacement arrived, Mr. Vanzuuk departed from the jobsite.

Mr. Vanzuuk was next scheduled to work on the evening of Tuesday, March 10, 2020, but was absent due to illness. At about noon on March 10, 2020, Mr. Vanzuuk contacted Field Supervisor Jill to give notice of his need to be absent for the remainder of the week due to illness. Mr. Vanzuuk had become increasingly ill with what he suspected was COVID-19. The employer expected Mr. Vanzuuk to contact the corporate office during office hours and to contact the field supervisors for matters occurring outside office hours. The employer did not clearly communicate this distinction to Mr. Vanzuuk. When Mr. Vanzuuk contacted Field Supervisor Jill, she told him to get better and to bring a doctor's note when he returned. On March 12 or 13, 2020, Operations Manager Mike Lovell terminated Mr. Vanzuuk's employment for attendance. Mr. Lovell was unaware of the contact between Mr. Vanzuuk and Field Supervisor Jill. The employer did not communicate this discharge decision to Mr. Vanzuuk.

Mr. Vanzuuk continued to be ill until April 6, 2020. During this period of illness, Mr. Vanzuuk did not consult with a doctor, but his mother, Casey Vanzuuk, contacted the family's primary care provider's office and spoke with a nurse. The nurse advised that Mr. Vanzuuk should quarantine at home. During this period of illness, Field Supervisor Jill called to check up on Mr. Vanzuuk and spoke with Mr. Vanzuuk's father. Mr. Vanzuuk's father explained that Mr. Vanzuuk was significantly ill.

On April 6, 2020, Mr. Vanzuuk was finally feeling well enough to return to work. Mr. Vanzuuk accessed the scheduling application where his work schedule would usually be posted, but saw that he had been deleted from the work schedule. Mr. Vanzuuk made multiple attempts to reach Field Supervisor Chris Jones and left multiple voicemail messages, but Mr. Jones did not respond. Mr. Vanzuuk continued to be interested in returning to the employment.

On December 24, 2019, the employer had issued a written reprimand to Mr. Vanzuuk for attendance. The employer does not know dates of the absences that factored in the December 24 reprimand. Mr. Vanzuuk was then absent on December 25, 2019.

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 evidence establishes that the employer terminated the employment on or about March 12, 2020, based on attendance. Up to that point, Mr. Vanzuuk had given no indication of an intention to voluntarily separate from the employment and had in fact contacted a field

supervisor regarding his need to be absent from work. Because the evidence establishes a discharge, the administrative law judge need not further consider the events that followed the employer's decision to end the employment.

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 weight of the evidence establishes a discharge for no disqualifying reason. The absences on March 9, 10, and 11, 2020 were excused absences under the applicable law. Mr. Vanzuuk properly notified the field supervisor of his need to leave early due to illness in the early hours of March 10, 2020. Mr. Vanzuuk then took reasonable steps to notify a field supervisor at noon on March 10, 2020 that he would be absent due to illness from his shift that evening and for the remainder of the week. The employer had not clearly communicated to Mr. Vanzuuk that he was required to call the office, rather than the field supervisor, to give notice of his need to be absent. Because these absences were excused absences under the applicable law, they cannot serve as a basis for disqualifying Mr. Vanzuuk for unemployment insurance benefits. Because these absences were excused absences, the evidence fails to establish a current act of misconduct and the administrative law judge need not consider the December absences or reprimand. Mr. Vanzuuk is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The May 22, 2020, reference 01, decision is affirmed. The claimant was discharged for no disqualifying reason. The discharge was effective March 12, 2020. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

July 13, 2020
Decision Dated and Mailed

jet/scn