

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANTONIO A RIVERA
Claimant

WHIRLPOOL CORPORATION
Employer

APPEAL NO. 20A-UI-10631-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/05/20
Claimant: Appellant (2R)

Iowa Administrative Code rule 871-24.1(113) – Layoff

STATEMENT OF THE CASE:

Antonio Rivera filed a timely appeal from the August 27, 2020, reference 01, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Rivera voluntarily quit the employment on June 9, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on October 19, 2020. Mr. Rivera participated. Amih Sallah, Senior Human Resources Representative, represented the employer. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO and KPYX.

ISSUES:

Whether the claimant was discharged for misconduct, voluntarily quit for good cause attributable to the employer, or was laid off.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Antonio Rivera began his full-time employment with Whirlpool Corporation in January 2020 and worked as a full-time assembler. Effective March 25, 2020, the employer laid off Mr. Rivera in connection with the employer's decision to temporarily close its plant in response to a COVID-19 outbreak at the plant. Shortly after the layoff, Mr. Rivera traveled to the plant to inquire about returning to work and was told by an employer representative that only essential workers were being allowed into the plant at that time. On May 2, 2020, the employer initiated a broadcast automated telephone call and text message to advise employees to return to work on May 3, 2020. Mr. Rivera was not included in the broadcast communication and did not receive notice of the recall. Mr. Rivera continued to wait for recall to the employment. Mr. Rivera eventually began looking for other employment in the Iowa City area where he resided.

Mr. Rivera had established an "additional claim" for benefits that was effective April 5, 2020. Mr. Rivera made weekly claims and received weekly benefits until his claim expired on July 4, 2020. Mr. Rivera thereafter established a new claim year that was effective July 5, 2020, but did not receive benefits in connection with the new claim year. When Mr. Rivera contacted Iowa Workforce Development to inquire why he was not receiving benefits an Agency representative

told him Whirlpool alleged he had voluntarily quit the employment. Mr. Rivera had not intended to separate from the employment and was instead waiting to be recalled to the employment. The employer had placed Mr. Rivera on a terminated list effective June 9, 2020, after Mr. Rivera did not return to the employment in connection with the May 2, 2020 broadcast recall.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

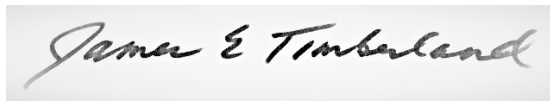
In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See 871 IAC 24.25.

The weight of the evidence in the record establishes a March 25, 2020 layoff and no subsequent recall to the employment. The claimant had no intention of voluntarily separating from the employment and did not voluntarily quit the employment. Nor was the claimant discharged for misconduct in connection with the employment. In the absence of a voluntary quit or disqualifying discharge from the employment, the separation from the employment would not disqualify the claimant for unemployment insurance benefits. See Iowa Code section 96.5(1) (regarding voluntary quits without good cause attributable to the employer) and Iowa Code section 96.5(2)(a) (regarding discharges for misconduct in connection with the employment). Based on the separation from the employment, the claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits, pending remand to the Tax Bureau for a determination of whether employer liability for benefits may be waived in light of the COVID-19 basis for the layoff.

DECISION:

The August 27, 2020, reference 01, decision is reversed. The claimant was laid off effective March 25, 2020 and was not recalled to the employment. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits, pending remand to the Tax Bureau for a determination of whether employer liability for benefits may be waived in light of the COVID-19 basis for the layoff.

This matter is **remanded** to the Tax Bureau for a determination of whether employer liability for benefits may be waived in light of the COVID-19 basis for the layoff.



James E. Timberland
Administrative Law Judge

October 22, 2020
Decision Dated and Mailed

jet/scn