

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**MILTON RODRIGUEZ**  
Claimant

**APPEAL NO. 18A-UI-03761-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WINNEBAGO INDUSTRIES**  
Employer

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

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

**STATEMENT OF THE CASE:**

Milton Rodriguez filed a timely appeal from the March 15, 2018, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Rodriguez voluntarily quit on February 28, 2018 without good cause attributable to the employer. After due notice was issued, a hearing was held on April 18, 2018. Mr. Rodriguez participated and presented additional testimony through April Lynn. Susan Gardner represented the employer and presented additional testimony through Roger White and David Midgaard.

**ISSUE:**

Whether Mr. Rodriguez separated from the employment for a reason that disqualifies him for unemployment insurance benefits or that relieves the employer's account of liability for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Milton Rodriguez was employed by Winnebago Industries as a full-time floor construction laborer beginning in October 2017. Mr. Rodriguez is a Hispanic person. Mr. Rodriguez last performed work for the employer on February 28, 2018. Mr. Rodriguez's work hours were 6:00 a.m. to 4:30 p.m., Monday through Friday. Mr. Rodriguez was also required to work as needed on Saturdays from 6:00 a.m. to 11:00 a.m. Supervisor Roger White was Mr. Rodriguez's supervisor. Another supervisor, Nick (last name unknown) and Lead Person Don Munson also supervised Mr. Rodriguez's work. To perform his work, Mr. Rodriguez would have to wait for the welders to finish constructing a metal chassis. April Lynn worked in the same area as a floor construction laborer.

On February 28, 2018, the employer was short a welder in the floor construction area. The employer recruited Nick Herman, who was lead welder in another department, to assist in the floor construction area. Mr. Rodriguez was assigned to assist Mr. Herman. Mr. Rodriguez and Ms. Lynn performed their assigned duties and busied themselves with other tasks while they waited for Mr. Herman to finish welding chassis. At one point, Mr. Rodriguez sat down momentarily to tie his shoe. As soon as Mr. Rodriguez sat down, Mr. Herman yelled at

Mr. Rodriguez to help put away tools. Mr. Rodriguez was offended by Mr. Herman's utterances. Mr. Rodriguez told Mr. Herman that Mr. Herman had no right to talk to him like that and to not disrespect him. In response, Mr. Herman yelled at Mr. Rodriguez to "get the fuck up," "don't be fucking standing there," and "come fucking help." Mr. Herman then contacted Mr. Munson to complain about Mr. Rodriguez. Mr. Munson in turn contacted Mr. White to relay Mr. Herman's complaint. Mr. White then summoned Mr. Rodriguez to his office.

Mr. Rodriguez and Mr. White tell very different stories regarding what happened in Mr. White's office. No one else was present for the meeting. Mr. Rodriguez's version of the interaction is what actually occurred. Mr. White asked Mr. Rodriguez what he was doing on the production floor and Mr. Rodriguez said he sat down for a minute to tie his shoe. Mr. White told Mr. Rodriguez that everyone needed to work at a constant pace. Mr. Rodriguez replied that he saw other people sitting down. Mr. White responded, "Maybe you need to take some time off because you don't want to work." Mr. Rodriguez asked Mr. White how he was supposed to work with people screaming at him. Mr. Rodriguez stated that he was not going to let anyone treat him like that or scream at him like that. Mr. White repeated that maybe Mr. Rodriguez just needed to take some time off. Mr. Rodriguez took his badge and his ear plugs off and told Mr. White, "See you later."

After the meeting ended, Mr. Rodriguez went to his employee locker and collected his jacket. Mr. Rodriguez left in the locker some personal food items and some markers and tools that belonged to the employer. While Mr. Rodriguez was at his locker, he encountered his coworker, Ms. Lynn. Ms. Lynn asked Mr. Rodriguez what was going on. Ms. Lynn observed that Mr. Rodriguez was not his usual talkative self and was agitated. Mr. Rodriguez told Ms. Lynn that he had been told to take off time for a while. Mr. Rodriguez then exited the workplace. Mr. Rodriguez left his ID badge with the security staff at the guard shack. Mr. Rodriguez left his badge at the guard shack because he did not think he would be returning to the employment in light of what he perceived to be unfair, racially-discriminatory treatment. Mr. Rodriguez would ordinarily take his ID badge home with him. Mr. Rodriguez left the workplace at 9:00 a.m., before the scheduled end of his shift.

On March 1, 2018, Mr. Rodriguez called the workplace and spoke with a Winnebago supervisor. Mr. Rodriguez asked the supervisor whether he was fired. The supervisor told Mr. Rodriguez that the employer deemed him to have abandoned the employment. Mr. Rodriguez asked how he could abandon his job when he had been called to the office. The supervisor said he would call Mr. Rodriguez back, but did not call back.

#### **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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of*

*LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

Mr. Rodriguez and Ms. Lynn were the only witnesses who testified from personal knowledge regarding the interaction between Mr. Rodriguez and Mr. Herman. The employer's testimony regarding that interaction consisted of hearsay within hearsay and is not reliable. Mr. Rodriguez's and Ms. Lynn's testimony regarding the interaction is consistent and credible. As noted in the findings of fact, Mr. Rodriguez and Mr. White tell very different stories regarding what happened in Mr. White's office. The weight of the evidence establishes that Mr. Rodriguez's version of events is credible and that Mr. White's version of events is not credible. Both have an interest in the outcome of the unemployment insurance matter. Because the administrative law judge deemed Mr. Rodriguez's testimony credible, his version of events is included in the findings of fact. Mr. Rodriguez's version of events is supported by Ms. Lynn's credible testimony concerning her interaction with Mr. Rodriguez at his locker following the meeting with Mr. White. Ms. Lynn has no vested interest in the outcome of the unemployment insurance case. Mr. Rodriguez was the only witness who testified from personal knowledge regarding his contact with a Winnebago supervisor on the day following his meeting with Mr. White. The weight of the evidence establishes that Mr. Rodriguez's testimony regarding the nature and substance of that contact is credible.

The weight of the evidence establishes that Mr. Rodriguez was discharged on March 1, 2018 and did not voluntarily separate from the employment. The weight of the evidence establishes that Mr. White initiated Mr. Rodriguez's early departure on February 28, 2018, by inviting him to take some time off. Mr. Rodriguez accurately perceived that Mr. White was not interested in hearing his concerns about being verbally abused by Mr. Herman, that there would be no remedy provided by the employer, and that his sole choice was to return to the production floor to endure the same treatment or accept Mr. White's invitation to leave at that time. Mr. Rodriguez was understandably upset and elected to accept the invitation to leave, rather than submit to continued verbal abuse from the substitute welder. Mr. Rodriguez's early departure on February 28, 2018 at the employer's invitation cannot be deemed walking off the job under Iowa Administrative Code rule 871-24.25(27) or be deemed an unexcused absence Iowa Administrative Code rule 871-24.32(7).

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 discharged Mr. Rodriguez on March 1, 2018 when the employer refused to allow Mr. Rodriguez to return to the employment. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Rodriguez was discharged for no disqualifying reason. Accordingly, Mr. Rodriguez is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

Based on the evidence in the record, Mr. Rodriguez would also have prevailed in the appeal if the administrative law judge had concluded that Mr. "Rodriguez had voluntarily quit.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Quits due to intolerable or detrimental working conditions are deemed to be for good cause attributable to the employer. See Iowa Administrative Code rule 871-24.26(4). The test is whether a reasonable person would have quit under the circumstances. See *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330 (Iowa 1988) and *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (1993). Aside from quits based on medical reasons, prior notification of the employer before a resignation for intolerable or detrimental working conditions is not required. See *Hy-Vee v. EAB*, 710 N.W.2d 213 (Iowa 2005).

The weight of the evidence in the record establishes intolerable and detrimental working conditions based on Mr. Herman's verbal abuse of Mr. Rodriguez, the employer's failure to address Mr. Rodriguez's legitimate concern about the verbal abuse, and Mr. White's heavy-handed interaction with Mr. Rodriguez. Thus even if the evidence had established a voluntary

quit, that quit would have been for good cause attributable to the employer. Accordingly, Mr. Rodriguez would be eligible for benefits, provided he is otherwise eligible and the employer's account would be subject to charge.

**DECISION:**

The March 15, 2018, reference 01, decision is reversed. The claimant was discharged for no disqualifying reason. The discharge date was March 1, 2018. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs