

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRAVIS G MEYERS
Claimant

APPEAL NO. 17A-UI-04947-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREGORY MFG CO
Employer

**OC: 11/13/16
Claimant: Appellant (2)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 5, 2017, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on an Agency conclusion that the claimant had voluntarily quit on April 14, 2017 without good cause attributable to the employer. After due notice was issued, a hearing was held on May 26, 2017. Claimant Travis Meyers participated. Paula Hall, Controller, represented the employer.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies him for 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: Travis Meyers was employed by Gregory Manufacturing Company as a full-time welder from 2014 until Monday, April 17, 2017, when John Johnson, Lead Second Shift Supervisor, discharged him from the employment. Mr. Johnson was Mr. Meyers' immediate supervisor. When Mr. Meyers appeared for work on April 17, Mr. Johnson asserted that Mr. Meyers had walked off the job on Friday, April 14, 2017. Mr. Johnson had been on vacation that day. Leads Larry Baker and Jeff McKay had supervised Mr. Meyers' work in Mr. Johnson's absence. Mr. Meyers had left early on April 14, 2017, but had not walked off the job. Instead, Mr. McKay had sent Mr. Meyers home early after he was unable to keep up with other welders working on the same production line. One of the other welders had directed profanity at Mr. Meyers in connection with his inability to keep up. Mr. Meyers spoke to Mr. McKay about that issue and requested to be moved to a different production line for the remainder of the shift. Mr. McKay elected instead to send Mr. Meyers home early.

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. 871 IAC 24.1(113)(c). A quit is a separation initiated by the

employee. 871 IAC 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 871 IAC 24.25.

The weight of the evidence in the record establishes that the employer discharged Mr. Meyers from the employment under the erroneous belief that Mr. Meyers had walked of the job on April 14, 2017.

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).

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). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly be inferred that the more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976).

The weight of the evidence in the records establishes that Mr. Meyers did not walk off the job on April 14, 2017, but instead was sent home early due to an inability to keep up with production requirements. The employer's decision to send Mr. Meyers home early establishes neither a voluntary quit nor an unexcused absence. In the absence of a final unexcused absence, the evidence fails to establish a current act of misconduct. In the absence of a current act of misconduct, the separation would not disqualify Mr. Meyers for unemployment insurance benefits and there is no need for the administrative law judge to consider earlier attendance matters. The administrative law judge notes that the employer did not present testimony from any of the supervisors involved in early departure on April 14 or the conversation that took place when Mr. Meyers appeared for work on April 17. The employer had the ability to present such testimony.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Mr. Meyers was discharged for no disqualifying reason. Accordingly, Mr. Meyers is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The May 5, 2017, reference 01, decision is reversed. The claimant was discharged on April 17, 2017 for no disqualifying reason. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs