

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES F OCONNOR
Claimant

WHIRLPOOL CORPORATION
Employer

APPEAL 16A-UI-12691-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/30/16
Claimant: Appellant (2-R)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 21, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on December 14, 2016. The claimant, James F. O'Connor, participated. The employer, Whirlpool Corporation, participated through Eric McGarvey, human resources generalist. Employer's Exhibit 1 was received and admitted into the record without objection.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a material handler, from October 4, 1991, until July 9, 2016, when he was discharged for failing to report back from medical leave. Claimant last reported to work on June 26, 2015. He went on leave after that day due to issues with his back. The parties agree that claimant's initial leave of absence was extended multiple times. Claimant testified that he spoke with Linda Allison in Human Resources about his leave. Allison received a form from claimant's doctor and told him to give her a call back eventually, after he was recovered. Claimant believes that at this time, his leave was extended and he was placed on permanent disability. The employer denies Allison had the authority to do this, as the employer uses a third-party claims administrator who deals with all leave requests.

McGarvey testified claimant was scheduled to return from leave on April 14, 2016, but he did not report back to work and did not contact the employer. McGarvey believes claimant was mailed "the green sheet" discharging him in July, several months after he was scheduled to return, as Matrix did not close out claimant's leave request until that time. The employer

provided a copy of its leave policy. (Exhibit 1) This policy does not indicate how an employee applies for extensions of leave or whether an employee may deal directly with the employer for these requests. McGarvey had no firsthand knowledge about any of claimant's leave or extension requests, and McGarvey did not have access to claimant's employment file.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit his employment but was discharged for no disqualifying reason.

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.

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); see also Iowa Admin. Code r. 871-24.25(35). 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). Here, there is no indication claimant voluntarily left his employment. The employer did not provide any evidence showing claimant knew his employment would end if he did not return back to work after a certain date, and claimant denies that he intended to quit. Therefore, this case will be analyzed as a discharge from employment. The burden of proof falls to the employer to establish disqualifying misconduct.

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).

Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. A reported absence related to illness or injury is excused for the purpose of the Iowa Employment Security Act. An employer's point system, no-fault absenteeism policy or leave policy is not dispositive of the issue of qualification for benefits.

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 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.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds claimant's version of events more credible than the employer. McGarvey did not have any firsthand knowledge of claimant's request for leave and extensions of that leave, and he did not have claimant's employment file available during the hearing. The employer did not provide any documentation it claims it sent to the claimant notifying him that his leave had expired and he needed to return to work. Weighing McGarvey's testimony against claimant's firsthand knowledge, the administrative law judge finds that claimant spoke with Allison and believed that he was still on protected leave status at the end of his employment.

Here, claimant was absent related to an ongoing issue with his back, which he had reported to the employer and the third-party administrator and for which he had received approved leave. Claimant's last conversation with the employer notified him to report back only when he was

ready to return to work. In spite of the claimed expiration of claimant's approved leave, because the final cumulative absence for which claimant was discharged was related to properly reported illness or injury and related ongoing medical treatment, no misconduct has been established and no disqualification is imposed. Benefits are allowed, provided claimant is otherwise eligible. As claimant testified that his back issues persist and he is awaiting at least one additional surgery, this matter is remanded for a determination on whether claimant is able to work and available for work.

DECISION:

The November 21, 2016, (reference 01) unemployment insurance decision is reversed. Claimant did not quit his employment but was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

REMAND:

The issue of whether claimant is able to work and available for work is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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