IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

MOHAMMED A ABDALLA Claimant **AMAZON COM SERVICES INC** Employer	**APPEAL NO. 21A-UI-08003-JT-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 01/10/21** **Claimant: Appellant (2)**

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.5(2)(a) - Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 18, 2021, reference 04, decision that disqualified the claimant for benefits and that stated the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant was discharged on January 12, 2021 for violation of a known company rule. After due notice was issued, a hearing was held on June 1, 2021. The claimant participated. The employer did not provide a telephone number for the hearing and did not participate. Exhibits A and B were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began his employment with Amazon.com Services, Inc. in April 2020 as a full-time warehouse sorter. The starting wage was $15.00 an hour. The work hours were 1:15 a.m. to 11:40 a.m., Wednesday through Saturday.

After two months, the claimant applied for and was promoted to a safety job. At that time, the claimant's wage increased to $17.00 an hour. In the safety position, the claimant observed workers and prepared a daily report for his supervisor. The clamant had sought the safety position in part because the warehouse work had aggravated a preexisting issue with the claimant's neck. The work hours in the safety position were similar to the work hours in the warehouse sorting position.

After two or three months in safety position, the claimant applied for and transitioned into a driver trainer position. The driver trainer position paid $17.00 an hour. The work hours were 6:00 a.m. to 4:00 p.m., Monday through Friday.

The claimant last performed work in the driver trainer position on December 24, 2020. At that time, the claimant's supervisor told the claimant there was not more work in the driver trainer position. The supervisor told the claimant that effective December 28, 2020 the claimant would have to return to the warehouse sorter position and the wage and hours that had originally gone with that position. The claimant balked at the request that the directive the he return to the more physically taxing position and that he acquiesce in the $2.00 an hour pay cut. The claimant and his supervisor corresponded by email. When the claimant did not report as directed for the warehouse sorter work, the supervisor contacted the claimant to ask whether he was going to report to the warehouse sorter work or whether he was going to quit the position. The claimant did not desire to separate from the employment, but declined to return to the warehouse sorter position. The employer directed the claimant to submit his employee badge to the employer and the claimant complied on January 12, 2021.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

Iowa Admin. Code r. 871-24.26(1) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. *Id.* An employee acquiesces in a change in the conditions of employment if he or

she does not resign in a timely manner. See *Olson v. Employment Appeal Board*, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The evidence in the record establishes that the claimant voluntarily quit the employment with good cause attributable to the employer and in response to substantial changes in the established conditions of the employment. The claimant had only performed the warehouse sorter duties for the first two months of the employment. Two months into the employment, the conditions of the employment changed when the claimant was promoted to the safety position that provided less physically taxing work and a $2.00 an hour increase in pay. Four or five months into the employment, the conditions of the employment changed again when the claimant stepped into the driver trainer position. Though the pay remained at the $17.00 an hour level, the work hours improved to day-shift hours. The work continued to be less physically taxing than the warehouse worker starting position. In December 2020, when the employer notified the claimant that there was no more work in the driver trainer position, the establishes conditions of the employment were those conditions that went with the driver trainer position. Toward the end of December 2020, the employer communicated that there would be substantial changes in the conditions of the employment. The substantial changes included a $2.00 reduction in pay, a return to the less favorable nighttime work hours, and the more physically taxing work. The claimant elected to leave the employment, rather than acquiesce in the changed conditions. The claimant did not unreasonably delay communicating his refusal to acquiesce in the changed conditions.

The separation could be analyzed in the alternative as a discharge for failure to follow an employer directive.

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 Iowa Admin. Code r.871 -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).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The evidence establishes, in the alternative, a discharge for no disqualifying reason. The employer presented no evidence to establish that its directive that the claimant move from the driving position to the warehouse position was reasonable. The evidence establishes that the expectation that the claimant accept a $2.00 cut in pay and return to more physically taxing work was unreasonable in light of the established conditions of the employment. The claimant's refusal to return to the lower paying and more physically taxing job was reasonable. The claimant's refusal to return to the warehouse sorter position was based not only on the pay cut, but also on his desire not to return to the physically taxing work that hat aggravated his medical condition.

The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The March 18, 2021, reference 04, decision is reversed. The claimant voluntarily quit the employment effective January 12, 2021 with good cause attributable to the employer. In the alternative, the claimant was discharged on January 12, 2021 for no disqualifying reason. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

June 11, 2021
Decision Dated and Mailed

jet/kmj