

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MEREDITH A KNODE
Claimant

APPEAL NO. 20A-UI-05343-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP LLC
Employer

OC: 03/29/20
Claimant: Appellant (2/R)

Iowa Code section 96.5(2)(a) – Discharge

STATEMENT OF THE CASE:

Meredith Knode filed a timely appeal from the May 29, 2020, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Ms. Knode voluntarily quit on March 14, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on July 7, 2020. Ms. Knode participated. The administrative law judge took official notice of the Agency administrative record of benefits paid to the claimant (DBRO and KPYX).

ISSUE:

Whether the claimant voluntarily quit on or about March 14, 2020.

Whether the claimant was discharged on or about March 14 2020 for misconduct in connection with the employment.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Meredith Knode has been employed with Dolgencorp, L.L.C., doing business as Dollar General, during multiple distinct periods and at multiple locations. The most recent employment was at a Dollar General Store in Mountain Home, Arkansas. Ms. Knode began that employment on March 10, 2020. Angela Gardner was Store Manager and Ms. Knode's supervisor. The employment was supposed to be full-time. Ms. Knode's job title was Lead Sales Associate. At the time Ms. Knode performed work for the employer on March 10, 2020, Ms. Gardner had not yet scheduled Ms. Knode for additional shifts. On Thursday, March 12, 2020, Ms. Gardner called Ms. Knode at noon to ask whether Ms. Knode could work a 2:00 p.m. to close shift that day. Ms. Knode was at that point "running errands" about 90 minutes away from home and declined the shift. On the morning of Friday, March 13, 2020, Ms. Knode notified Ms. Gardner that her vehicle had broken down. Ms. Knode's home was a 20-minute drive from the workplace. Ms. Knode asked Ms. Gardner to give her the weekend, to allow her husband to fix the vehicle. Ms. Gardner approved the request. However, on the morning of Sunday, March 15, 2020, Ms. Gardner sent Ms. Knode a text message in which she advised Ms. Knode that she could no longer wait for Ms. Knode and was ending the employment. Ms. Knode responded by text message that she could report for work on Monday morning. Ms. Gardner did not respond.

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.

The evidence in the record establishes a March 15, 2020 discharge from the employment that had started on March 10, 2020. Ms. Knode had not communicated an intention to leave the employment and had taken no overt action to terminate the employment. Instead, the employer gave notice on March 15, 2020 that the employer was terminating the employment.

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 this 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).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See Iowa Administrative Code rule 871-24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See Iowa Administrative Code rule 871-24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Employers may not graft on additional requirements to what is an excused absence under the law. See *Gaborit v. Employment Appeal Board*, 743 N.W.2d 554 (Iowa Ct. App. 2007). For example, an employee's failure to provide a doctor's note in connection with an absence that was due to illness properly reported to the employer will not alter the fact that such an illness would be an excused absence under the law. *Gaborit*, 743 N.W.2d at 557.

The evidence in the record establishes a March 15, 2020 discharge for no disqualifying reason. The employer witness was not associated with the most recent period of employment that began on March 10, 2020 and had no familiarity with that employment. There may well be more to the story, but the employer failed to present any evidence to rebut Ms. Knode's testimony pertaining to the most recent employment. The evidence in the record establishes that Ms. Knode was discharged from the new employment at a time when she had no scheduled work hours and at a time when her supervisor had approved holding off on work hours through March 15, to give Ms. Knode an opportunity to repair her vehicle. The evidence fails to establish any absences that would be unexcused absences under the applicable law. The evidence fails to establish any other disqualifying misconduct in connection with the employment. Accordingly, Ms. Knode is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits

This matter will be remanded to the Benefits Bureau for initial adjudication of an earlier separation from the Davenport, Iowa store that occurred on or about September 2, 2019.

DECISION:

The May 29, 2020, reference 01, decision is reversed. The claimant was discharged on March 15, 2020 for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

This matter will be remanded to the Benefits Bureau for initial adjudication of an earlier separation from the Davenport, Iowa store that occurred on or about September 2, 2019.



James E. Timberland
Administrative Law Judge

August 3, 2020
Decision Dated and Mailed

jet/sam