

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

RONDELL G HENDRICKSON
Claimant

APPEAL NO. 18A-UI-11328-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 08/05/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Rondell Hendrickson filed a timely appeal from the November 13, 2018, reference 02, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the deputy's conclusion that Mr. Hendrickson voluntarily quit on October 5, 2018 due to a non-work related medical condition and without good cause attributable to the employer. After due notice was issued, a hearing was held on December 5, 2018. Mr. Hendrickson participated. The employer did not register a telephone number for the hearing and did not participate. The employer provided written notice that the employer waived participation in the appeal hearing. Exhibits A and B were received into evidence.

ISSUES:

Whether Mr. Hendrickson voluntarily quit the employment without good cause attributable to the employer.

Whether Mr. Hendrickson was discharged for misconduct in connection with the employment that disqualifies him for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Rondell Hendrickson was employed by Casey's Marketing Company as a part-time kitchen clerk at the Casey's on the north edge of Colfax from August 18, 2018 until October 8, 2018, when Store Manager Jess Minehart discharged Mr. Hendrickson from the employment for attendance. On October 1, 2, 3, 4 and 5, Mr. Hendrickson was absent due to illness and notified the employer each day of his need to be absent. Mr. Hendrickson was next scheduled to work on October 9, 2018. On October 8, 2018, Mr. Hendrickson stopped at the workplace to advise that he had recovered from his illness and was ready to return to work the following day. At that time, Ms. Minehart discharged him from the employment.

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 that Mr. Hendrickson was discharged from the employment and did not voluntarily quit. At no time did Mr. Hendrickson notify the employer that he wished to sever the employment relationship. Mr. Hendrickson's actions during his absence from the employment did not communicate an intention to leave the employment. Mr. Hendrickson maintained regular contact with the employer regarding his need to be absent due to illness. The employer has presented no evidence to rebut Mr. Hendrickson's testimony that he was discharged from 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 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 Administrative Code rule 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 Iowa Administrative Code rule 871-24.32(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 discharge for no disqualifying reason. The discharge was based on absences that were due to illness and that were reported to the employer. The employer presented no evidence to establish otherwise. The employer presented no evidence to prove another basis for the absences or to prove that the absences were not properly reported. The employer presented no evidence to prove misconduct in connection with the employment based on attendance or other conduct. Mr. Hendrickson is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

DECISION:

The November 13, 2018, reference 02, decision is reversed. The claimant was discharged on October 8, 2018 for no disqualifying reason. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs