

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**TRAVIS J FINCH**  
Claimant

**ISLE OF GREEN INC**  
Employer

**APPEAL NO. 21A-UI-00473-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/05/20**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant, Travis Finch, filed a timely appeal from the November 13, 2020, reference 01, 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 voluntarily quit on May 14, 2020 without good cause attributable to the employer. After due notice was issued, a hearing was held on February 8, 2021. The claimant participated. Steve Finch represented the employer.

**ISSUE:**

Whether the claimant voluntary quit for good cause attributable to the employer.  
Whether the claimant was discharged for misconduct in connection with the employment.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant, Travis Finch, was employed by Isle of Green, Inc. from 1997 and last performed work for the employer on May 14, 2020. The claimant's father, Steve Finch, and a business partner, Bob Hessenius, own and operate the business. Mr. Hessenius' son, Chase Hessenius, is also employed with the business. On or about April 13, 2020, interpersonal strife arose after Chase Hessenius reported to the claimant's father that the claimant had disappeared for three hours in the middle of the workday. The claimant's father issued a verbal reprimand to the claimant in which he reminded the claimant that the claimant needed to be at work by 8:00 a.m. and to remain at work throughout the workday. The employer's busy season begins in February and the business gains momentum through Memorial Day. The claimant was well aware of the needs of the business, well familiar with the seasonal increase in operations, and well aware that he was supposed to be at work by 8:00 a.m. and to work to the end of each business day during the busy season. The claimant was also well aware that if he needed to be absent from work, he was required to call Bob Hessenius prior to the scheduled start of his shift and either speak directly with Mr. Hessenius or leave a voicemail message. Mr. Hessenius had voicemail set up on his phone at all relevant times.

After the verbal reprimand on or about April 13, 2020, the claimant commenced a pattern of petulant, disruptive behavior whereby he routinely reported to the workplace late without notice to the employer and then loitered in his truck for extended periods. On April 27, 2020, the claimant's father directed the claimant to report for work by 8:00 a.m. and to use the time clock to clock in and out. Bob Hessenius was present for that discussion. As of April 27, 2020, the claimant's father began keeping a daily log of the claimant's attendance and otherwise disruptive conduct. On April 28, the claimant was still sitting in his truck when his father arrived at 9:00 a.m. On April 29, the claimant had not arrived by 9:15 a.m., when his father left on his delivery route. On April 30, the claimant was not at work by 8:30 a.m., when his father left on his delivery route. Bob Hessenius documented the claimant's 10:30 a.m. arrival. On May 1, the claimant was still not at work by 8:20 a.m., when his father commenced his delivery route. On that same day, the claimant assisted another employee, Steve Miller, with putting up a shade cloth in the greenhouse. That interaction prompted Mr. Miller to tell the employer that he would never again work with the claimant. On May 4, the claimant sat in his truck at the workplace until noon, then did not perform any work that afternoon. On May 7, the claimant had not yet arrived at 8:20 a.m., when his father commenced his delivery route. On May 8, the claimant had not yet arrived at 8:30 a.m., when his father commenced his delivery route. The claimant was supposed to deliver a load of plants to a Hy-Vee store in West Des Moines. At 3:00 p.m., the Hy-Vee store contacted the employer because the claimant had not shown with the scheduled delivery. On May 9, the claimant worked just two hours of his scheduled work day. On May 10, 2020, Mother's Day, one of the employer's busiest days of the year, the claimant spent the day mowing the ditch, rather than assisting with business operations. On May 11, the claimant showed up late at 9:00 a.m. On May 12 and 13, the claimant had not yet arrived at 8:20 a.m., when his father began his delivery route. Bob Hessenius documented that the claimant worked just two hours of his scheduled shift on May 13. On May 15, 16, 17, 18 and 19, the claimant was a no-call/no-show. After the extended absence, the claimant appeared at the workplace on May 20, 2020 and asked Bob Hessenius whether there was any work for him. Mr. Hessenius told the claimant he did not have work for the claimant. The claimant did not return to work thereafter.

#### **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).

Iowa Admin. Code r. 871-24.25(4), (6) and (21) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code

section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

...

(6) The claimant left as a result of an inability to work with other employees.

...

(21) The claimant left because of dissatisfaction with the work environment.

The claimant acted in a manner that would lead a reasonable person to conclude that he voluntarily quit effective May 15, 2020. The claimant was a no-call/no-show for five consecutive work days between May 15, 2020 and May 19, 2020. The claimant knew it was the employer's busy season and that all hands were needed. The weight of the evidence fails to support the claimant's assertion that he was ill during those five days. The weight of the evidence fails to support the claimant's assertion that he gave notice of any kind to the employer during those five days when he was AWOL from the business. The five-day AWOL period was but a ratcheting up of the claimant's petulant pattern of behavior aimed at disrupting his father's business. The quit was based on the claimant's inability to work with others, dissatisfaction with the work environment, and five-day period of consecutive no-call/no-show absences. The claimant's voluntary quit was without good cause attributable to the employer. The employer was under no obligation to provide additional work after the claimant indicated through his actions an intention to end the employment.

The out of this case would have been the same if the evidence had indicated the claimant 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 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.

Each of the claimant's late arrivals and each of the claimant's no-call/no-absences was an unexcused absence under the applicable law. The unexcused absences were excessive, demonstrated a willful and wanton disregard of the employer's interests, and constituted misconduct in connection with the employment.

The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

**DECISION:**

The November 13, 2020, reference 01, decision is affirmed. The claimant voluntarily quit the employment effective May 14, 2020 without good cause attributable to the employer. The claimant is disqualified for benefits until the claimant has worked in and been paid wages for insured work equal to 10 times the claimant's weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.



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James E. Timberland  
Administrative Law Judge

February 25, 2021  
Decision Dated and Mailed

jet/lj

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA for the affected period, you will be required to repay the benefits you have received, if any.**