IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

AMBER TETLEY
Claimant

REES ASSOCIATES INC
Employer

APPEAL NO. 19A-UI-10105-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 11/17/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Amber Tetley filed a timely appeal from the December 19, 2019, reference 03, decision that disqualified her for benefits and that held the employer's account would not be charged, based on the deputy's conclusion that Ms. Tetley had voluntarily quit the employment on November 8, 2019 without good cause attributable to the employer and due to a non-work related medical condition. After due notice was issued, a hearing was held on January 16, 2020. Ms. Tetley participated. The employer provided written notice that the employer waived participation in the appeal hearing. Exhibits A through D were received into evidence.

ISSUES:

Whether Ms. Tetley voluntarily quit the employment without good cause attributable to the employer.
Whether Ms. Tetley was discharged for misconduct in connection with the employment.
Whether Ms. Tetley was laid off.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Amber Tetley was employed by Rees Associates, Inc. as a full-time machine loader. Ms. Tetley's usual work hours were 6:30 a.m. to 3:00 p.m., Monday through Friday. Ms. Tetley was also scheduled to work on Saturdays as needed. Ms. Tetley's job duties involved moving boxes of bulk mail from a pallet, removing the mail from the box, and loading the mail into a mail processing machine. Ms. Tetley would sometimes also have to strap bundles of mail. The work was repetitive in nature. The boxes Ms. Tetley had to move from the pallet could weigh up to 20 pounds. Ms. Tetley had to lift the boxes about check high.

Ms. Tetley has a number of medical issues that pre-date her employment with Rees Associates. Ms. Tetley suffers from arthritis. Ms. Tetley suffers from pain in her knees that will likely lead to knee replacement. However, Ms. Tetley's doctor has deemed her too young for knee replacement surgery and has chosen instead to manage Ms. Tetley's knee pain with periodic shots in her knees. Ms. Tetley suffers from asthma. Before Ms. Tetley began in the employment, she advised the employer that she had a tooth extraction surgery scheduled for November 11, 2019 and would need time off for the procedure and recovery.

In mid-October 2019, Ms. Tetley began to feel pain in her right elbow in the course of performing her work. Ms. Tetley is right-handed. Ms. Tetley notified her supervisor of her elbow pain. On November 5, 2019, Ms. Tetley's supervisor assigned Ms. Tetley to sweep the floor instead of perform her regular duties. Ms. Tetley performed this alternative work on November 5 and 6. However, the supervisor stated that he would not be able to continue the modified work without a medical note indicating Ms. Tetley needed a light-duty accommodation. The supervisor advised Ms. Tetley to go to the doctor to have her elbow checked out.

On November 7, 2019, Ms. Tetley was absent due to an asthma flare-up. Ms. Tetley attributes the incident to being assigned to sweep the floor. Ms. Tetley notified the employer she would be absent. Ms. Tetley was examined by a doctor at Broadlawns Medical Center. The doctor prescribed breathing treatments and released Ms. Tetley to return to work effective November 9, 2019.

On November 8, 2019, Ms. Tetley was evaluated by a medical doctor at UnityPoint Health, who released her to return to light-duty work, but restricted Ms. Tetley to "limited use of right arm, this includes pulling, pushing and overhead movements." Ms. Tetley under the restriction to mean no lifting of more than 10 pounds.

Ms. Tetley was scheduled off work for Monday, November 11, 2019, and the remainder of that week so that she could undergo her tooth extraction surgery and recover from the procedure.

Ms. Tetley attempted to return to work on November 18, 2019, but her supervisor said there was no light-duty work available and directed her to contact Veronica Gonzalez, Human Resources Director. When Ms. Tetley contacted Ms. Gonzalez, Ms. Gonzalez asserted the elbow issue was not work-related and advised that the employer had no light-duty work available for Ms. Tetley. Ms. Gonzalez advised Ms. Tetley to contact her when she was released to return to full duties without restrictions.

On November 21, 2019, Ms. Tetley received a text message from Rees Associates that stated as follows:

> This is Rees—unfortunately we are doing a temporary lay off effective immediately- you can pick up your check tomorrow in the office after 9am- we are hoping this is a 2 week temporary layoff

The employer has not recalled Ms. Tetley to the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871-24.1(113) characterizes the different types of employment separations as follows:

> Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.
> a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory–taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.
> b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.
d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 discharge, rather than a voluntary quit. Ms. Tetley did not give notice of an intention to leave the employment voluntarily and had no intention to voluntarily leave the employment. The employer terminated the employment when the employer told Ms. Tetley the employer would not accommodate Ms. Tetley's need for light-duty work and that the employer would not provide additional employment until Ms. Tetley was released to return to work without restrictions. The employer waived participation in the appeal hearing and presented no evidence to rebut Ms. Tetley's testimony that her elbow issue was caused by the repetitive nature of the work. An employer has an obligation to provide an employee with reasonable accommodations that enable the employee to continue in the employment. See *Sierra v. Employment Appeal Board*, 508 N.W. 2d 719 (Iowa 1993).

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).

The evidence in the record establishes a discharge for no disqualifying reason. The employer waived participation in the appeal hearing and presented no evidence to prove misconduct in connection with the employment. The evidence in the record does not indicate any misconduct in connection with the employment. Ms. Tetley is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged.

DECISION:

The December 19, 2019, reference 03, decision is reversed. The claimant was discharged for no disqualifying reason. The discharge was effective November 18, 2019. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/scn