

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ADIDJA NDAKARUTIMANA
Claimant

APPEAL NO. 16A-UI-13707-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION
Employer

OC: 12/27/15
Claimant: Appellant (2/R)

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

STATEMENT OF THE CASE:

Adidja Ndakarutimana filed a timely appeal from the December 20, 2016, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on an agency conclusion that Ms. Ndakarutimana voluntarily quit on December 25, 2016 without good cause attributable to the employer. After due notice was issued, a hearing was held on January 19, 2017. Ms. Ndakarutimana participated. The employer did not register a telephone number for the hearing and did not participate. Exhibit A was received into evidence.

ISSUE:

Whether Ms. Ndakarutimana separated from her employment at Whirlpool Corporation for a reason that disqualifies her for unemployment insurance benefits or that relieves the employer of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Adidja Ndakarutimana was employed by Whirlpool Corporation as a full-time assembler. Ms. Ndakarutimana is a non-native English speaker. Her original language is Swahili. Ms. Ndakarutimana began the employment in 2014 and last performed work for the employer on July 17, 2016. At that time, Ms. Ndakarutimana's doctor took her off work in connection complications Ms. Ndakarutimana was experiencing in her pregnancy. Ms. Ndakarutimana's doctor told her that she would need to remain off work for the duration of her pregnancy. Ms. Ndakarutimana requested, and the employer approved, a leave of absence for the duration of the pregnancy. Ms. Ndakarutimana gave birth to her baby on November 8, 2016. Ms. Ndakarutimana was released from the hospital on November 11, 2016, but was not released to return to work at that time. Ms. Ndakarutimana continued to experience health issues that prevented her from being able to return to work and her doctor told her that she would need to remain off work for an extended period. On or about November 25, 2016, Ms. Ndakarutimana asked the employer to extend her approved leave period. Ms. Ndakarutimana renewed her request at the beginning of December 2016. The employer elected not to extend the leave period and told Ms. Ndakarutimana that she would need to reapply in the future. As of the January 19, 2017 appeal hearing, Ms. Ndakarutimana had not

been released by her doctor to return to work. Ms. Ndakarutimana anticipates that her doctor might release her to return to work at the time of an appointment set for the end of January 2017.

REASONING AND CONCLUSIONS OF LAW:

Workforce Development rule 871 IAC 24.1(113) provides 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 *Prairie Ridge Addiction Treatment Servs. v. Jackson and Emp't Appeal Bd.*, 810 N.W.2d 532 (Iowa Ct. App. 2012), the claimant, Ms. Jackson, had been injured in a non-work related automobile accident and requested a leave of absence so that she could recover from her injury. The employer approved the initial leave request. Ms. Jackson experienced setbacks in her recovery that prevented her from returning to work at end of the approved medical leave. The employer approved an extension of the leave of absence. The employment ended when the employer decided to terminate the employment, rather than grant an additional extension of the leave of absence. At the time the employer elected to call the employment done, Ms. Jackson had not yet been released by a doctor to return to work. The Iowa Court of Appeals held that Ms. Jackson did not voluntarily quit the employment. The Iowa Court of Appeals further held that since Ms. Jackson had not voluntarily quit, she was not obligated to return to the employer upon her recovery to offer her services in order to be eligible for unemployment insurance benefits. The effect of the court's decision was to treat the separation as a discharge from the employment.

Ms. Ndakarutimana's circumstances are sufficiently similar to the situation in the *Prairie Ridge* case to make the court's ruling in that matter binding in this matter as well. Ms. Ndakarutimana's doctor took her off work in connection with a pregnancy related illness. The employer granted a leave of absence for the duration of the pregnancy. Both parties expected that Ms. Ndakarutimana would return to the employment after having her baby. However, Ms. Ndakarutimana's doctor declined to release her to return to work at that time because Ms. Ndakarutimana had not recovered sufficiently to return to work. Ms. Ndakarutimana requested an extension of her leave of absence. The employer declined to extend the leave and terminated the employment. Under the ruling in *Prairie Ridge*, Ms. Ndakarutimana was discharged from the employment and did not voluntarily quit.

Iowa Code § 96.5-2-a provides:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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). When it is in a party's power to produce more direct and satisfactory evidence than is actually produced, it may fairly

be inferred that the more direct evidence will expose deficiencies in that party's case. See *Crosser v. Iowa Dept. of Public Safety*, 240 N.W.2d 682 (Iowa 1976).

The employer did not appear for the appeal hearing and did not present any evidence to support the assertion that Ms. Ndakarutimana voluntarily the employment or that she was discharged for misconduct in connection with the employment. The evidence in the record indicates that the separation was not based on misconduct.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Ndakarutimana was discharged for no disqualifying reason. Accordingly, Ms. Ndakarutimana is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged for benefits.

Because Ms. Ndakarutimana had not been released to return to work as of the January 19, 2017 appeal hearing, this matter will be remanded to the Benefits Bureau for determination of whether Ms. Ndakarutimana has been able to work and available for work within the meaning of the law since she established her claim for benefits.

DECISION:

The December 20, 2016, reference 01, decision is reversed. The claimant was discharged from the employment on or about November 25, 2016 for no disqualifying reason. The claimant is eligible for benefits, provided she meets all other eligibility requirements. The employer's account may be charged.

This matter is remanded to the Benefits Bureau for determination of whether the claimant has been able to work and available for work since she established her claim for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs