

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

WILLIAM C GONZALEZ
Claimant

APPEAL NO. 19A-UI-09978-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION
Employer

**OC: 11/24/19
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

William Gonzalez filed a timely appeal from the December 12, 2019, reference 02, decision that disqualified him for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that Mr. Gonzalez was discharged on November 19, 2019 for violation of a known company rule. After due notice was issued, a hearing was held on January 14, 2020. Mr. Gonzalez participated. The employer did not provide a telephone number for the appeal hearing and did not participate in the hearing. Exhibits A was received into evidence.

ISSUE:

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

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: William Gonzalez was employed by Whirlpool Corporation as a full-time material handler. Mr. Gonzalez began the employment in February 2019 and last performed work for the employer on Monday, November 18, 2019. Mr. Gonzalez's work hours were 3:30 p.m. to midnight, Monday through Friday. On Thursday, November 14, 2019, the employer commenced painting in an area near Mr. Gonzalez work station in preparation for an upcoming tour of the workplace. Mr. Gonzalez could smell the new paint. In addition, the employer's ventilation system caused the paint smell to exhaust in the vicinity of Mr. Gonzalez's work station. On Friday, November 15, 2019, the employer continued the painting project in the vicinity of Mr. Gonzalez's work station. During the Friday shift, Mr. Gonzalez experienced a headache in response to the paint fumes. Mr. Gonzalez contacted the line supervisor to complain about the paint fumes, but the line supervisor said she was busy and could do nothing about the faint fumes. The employer provided Mr. Gonzalez with a mask filter that did not help with the paint fumes. By the end of the shift, Mr. Gonzalez felt ill. Mr. Gonzalez continued to feel ill over the weekend.

On Monday, November 18, 2019, the employer continued the painting project and Mr. Gonzalez became increasingly ill from breathing the paint fumes. Mr. Gonzalez asked for Tylenol. Mr. Gonzalez could taste the paint in his mouth. Mr. Gonzalez began to feel light-headed and dizzy. Mr. Gonzalez continued to perform his work duties until his last scheduled break. At that time, Mr. Gonzalez went to the nurses' station. Though the nurse offered a cot, Mr. Gonzalez was feeling too dizzy to lay down and instead sat in a darkened area.

At 11:30 p.m., Mr. Gonzalez's supervisor reported to the nurses' station and asked whether Mr. Gonzalez was okay. Mr. Gonzalez told the supervisor that he was dizzy and that he felt dizzy when he tried to stand. The supervisor then made a phone call while Mr. Gonzalez went to the restroom to urinate. Within a few minutes of Mr. Gonzalez's return to the nurses' station, the supervisor told Mr. Gonzalez that he would have to submit to a breath alcohol test and provide a urine specimen for drug testing. Mr. Gonzalez submitted to the breath alcohol test. Mr. Gonzalez protested that he had just used the restroom with the supervisor's knowledge and that supervisor should have asked for the urine test prior to letting him go to the restroom to urinate. Mr. Gonzalez nonetheless attempted to produce a urine specimen for testing, but was able to produce only a few drops of urine, an insufficient amount for drug testing. The supervisor informed Mr. Gonzalez that the employer had up to three hours to obtain a urine specimen from Mr. Gonzalez and that if Mr. Gonzalez left the workplace without providing the urine test, the employer would deem that a refusal to test and a voluntary quit. Mr. Gonzalez left the workplace at the scheduled end of his shift. Before Mr. Gonzalez left, the supervisor directed Mr. Gonzalez to relinquish his employee badge. Mr. Gonzalez provided his badge and stated that he would be in contact with the union the following day to grieve the matter. Mr. Gonzalez contacted the union the next day. Mr. Gonzalez is still waiting to hear further from the union and/or the employer regarding the status of his employment.

Mr. Gonzalez was upset by the November 18 experience related to the paint fumes in part because he is a recovering addict with 10 years of sobriety and felt that the employer compelled him to break that long period of sobriety by forcing him to inhale paint fumes in the workplace.

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 weight of the evidence establishes a discharge from the employment, rather than a voluntary quit. The employer created an unsafe working condition that caused Mr. Gonzalez's light-headedness and dizziness. Mr. Gonzalez took appropriate steps to bring the matter to the employer's attention on multiple occasions. Mr. Gonzalez succumbed to the paint fumes toward the end of his November 18 shift and took appropriate steps by going to the nurses' station for assistance. Half an hour before Mr. Gonzalez's shift was supposed to end, the employer requested that Mr. Gonzalez submit to drug testing without a reasonable basis for doing. The employer timed that test request so that it immediately followed Mr. Gonzalez's restroom break.

This made it impossible for Mr. Gonzalez to comply with the test request within a reasonable period. Under the particular circumstances, Mr. Gonzalez's decision to leave the work place at the scheduled end of his shift, rather than remain at work in an ill state for up to 2.5 to three more hours, did not constitute a voluntary quit. The employer terminated the employment by confiscating Mr. Gonzalez's ID badge and asserting that Mr. Gonzalez had quit. Mr. Gonzalez actually communicated a desire to continue in the employment by telling the employer he would be in touch with the union the following day to grieve the matter.

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).

The evidence in the record establishes a discharge for no disqualifying reason. The employer presented no evidence to prove a discharge based on misconduct in connection with the employment. The employer presented no evidence to establish that the request for breath alcohol testing or drug testing was authorized under Iowa Code section 730.5 or that the employer had reasonable suspicion to believe that Mr. Gonzalez was under the influence of alcohol or a drug. The employer created an unsafe working condition that caused Mr. Gonzalez’s light-headedness and dizziness. Under the circumstances, Mr. Gonzalez’s decision to leave the workplace at the scheduled end of his shift was not misconduct in connection with the employment. Mr. Gonzalez is eligible for benefits, provided he meets all other eligibility requirements. The employer’s account may be charged for benefits.

DECISION:

The December 12, 2019, reference 02, 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 he is otherwise eligible. The employer’s account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn