

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TORI D BOLEYN
Claimant

APPEAL NO. 18A-UI-04077-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESLEYLIFE
Employer

OC: 03/11/18
Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
Iowa Admin. Code Rule 871-24.26(21) – Quit in Lieu of Discharge

STATEMENT OF THE CASE:

Tori Boleyn filed an appeal from the March 29, 2018, reference 01, decision that disqualified her for benefits and that relieved the employer's account of liability for benefits, based on the Benefits Bureau deputy's conclusion that Ms. Boleyn voluntarily quit on March 12, 2018 without good cause attributable to the employer. After due notice was issued, a hearing was held on April 25, 2018. Ms. Boleyn participated. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Exhibit A was received into evidence.

ISSUE:

Whether the claimant separated from the employment for a reason that disqualifies the claimant for benefits or that relieves the employer's account of liability for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tori Boleyn was employed by WesleyLife as the full-time Director of People and Culture, that is, human resources manager, at Park Center in Newton from 2015 until March 12, 2018, when the employer ended her employment. On that day, Christie Van Der Wiel, Vice President of Human Resources, notified Ms. Boleyn that the employer was trying to change the culture at Park Center and that the employer was going to start by ending Ms. Boleyn's employment. Ms. Van Der Wiel referenced a December 2017 meeting facilitated by Ms. Boleyn as a factor in the employer's decision to end Ms. Boleyn's employment. Ms. Van Der Wiel offered Ms. Boleyn the option of quitting in lieu of being discharged. The employer offered Ms. Boleyn a severance package and provided her with additional time to consider the matter and her response. The employer directed Ms. Boleyn to leave the employer's property immediately. Jackie Nichol, Vice President of Network Operations, was present for the discussion. Ms. Boleyn considered the employer's terms and on March 21, 2018 signed the severance agreement, thereby resigning in lieu of being discharged from the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code Rule 871-24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

In analyzing quits in lieu of discharge, the administrative law judge considers whether the evidence establishes misconduct that would disqualify the claimant for unemployment insurance benefits.

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).

Iowa Administrative Code rule 871-24.32(9) provides as follows:

Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct

must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification.

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 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 Admin. Code Rule 871-24.32(4).

The evidence in the record establishes an involuntary separation from the employment on March 12, 2018, when the employer indefinitely suspended Ms. Boleyn pending her decision regarding whether she would accept the employer's offer of a severance package and quit in lieu of being discharged from the employment. The employer has presented no evidence to establish a voluntary separation from the employment or to establish an involuntary separation based on misconduct in connection with the employment.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Boleyn was discharged on March 12, 2018 for no disqualifying reason. Accordingly, Ms. Boleyn is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

DECISION:

The March 29, 2018, reference 01, decision is reversed. The claimant was discharged on March 12, 2018 for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs