

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRACY A SMITH
Claimant

DOLGENCORP LLC
Employer

APPEAL NO. 19A-UI-07460-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/18/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Tracy Smith filed a timely appeal from the September 17, 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. Smith voluntarily quit on July 28, 2019 without good cause attributable to the employer. After due notice was issued, a hearing was held on October 14, 2019. Mr. Smith participated. The employer did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. The hearing in this matter was consolidated with the hearing in Appeal Number 19A-UI-07461-JTT. Exhibit A was received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to Mr. Smith.

ISSUES:

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

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tracy Smith was employed by Dolgencorp, L.L.C., doing business as Dollar General, as a part-time stocker from 2017 until August 8, 2019, when the employer discharged him from the employment. For most of the employment, Mr. Smith was assigned to a Dollar General store on Southeast 14th Street in Des Moines and helped at one or more other stores as needed. During the last couple months of the employment, Mr. Smith worked primarily at a different, recently opened store on the east side of the Des Moines metropolitan area. Shortly before the employment ended, Mr. Smith entered into an agreement with the managers of the two stores whereby he was to transfer to the new store. Mr. Smith was interested in transferring to the new store because it was closer to his home. However, before the transfer could become official, Mr. Smith received word that the employer was ending his employment instead. Mr. Smith asked the manager of the newly opened store the reason for his termination, but that manager

did not know the reason. A district manager subsequently advised Mr. Smith that the discharge was the result of a miscommunication. Mr. Smith had not intended to voluntarily separate from the employment and took no overt actions to sever the employment relationship.

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 evidence in the record establishes a discharge, rather than a voluntary quit. The employer did not participate in the appeal hearing. The employer presented no evidence to rebut Mr. Smith's testimony that he was discharged from the employment and did not voluntarily quit.

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 presented no evidence to prove misconduct in connection with the employment. Accordingly, Mr. Smith is eligible for benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits.

DECISION:

The September 17, 2019, reference 02, decision is reversed. The claimant was discharged for no disqualifying reason. The discharge was effective August 8, 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/rvs