

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**TOMMY D REAVES**  
Claimant

**APPEAL NO. 18A-UI-10243-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FBG SERVICE CORPORATION**  
Employer

**OC: 09/23/18  
Claimant: Respondent (5)**

Iowa Code section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 8, 2018, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer's account could be charged for benefits, based on the Benefits Bureau deputy's conclusion that the claimant had voluntarily quit on September 17, 2018 with good cause attributable to the employer and based on a change in the contract of hire. After due notice was issued, a hearing was held on October 26, 2018. Claimant Tommy Reaves participated. Raul Ybanez of Equifax represented the employer and presented testimony through Andrea Jordan. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant.

**ISSUES:**

Whether the claimant voluntarily quit for good cause attributable to the employer.

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: FBG Services Corporation is a cleaning business. Tommy Reaves was employed by FBG as a full-time cleaning specialist from March 2017 until September 17, 2018, when Jim Burmeister, Operations Supervisor, discharged him from the employment. Mr. Burmeister was Mr. Reaves' immediate supervisor. Mr. Reaves has at all relevant times resided in Corydon. Until mid-September 2018, Mr. Burmeister's primary work duties consisted of cleaning three Alliant Energy facilities in Centerville. Mr. Reaves cleaned these facilities during the late afternoon and evening hours. Mr. Reaves would clean one of the Alliant facilities daily, Monday through Friday, and was allowed 4.5 hours to complete the work. Mr. Reaves cleaned a second Alliant facility three times per week, Monday, Wednesday and Friday and was allowed three hours to perform the work. Mr. Reaves cleaned the third Alliant facility on Fridays and was allowed one hour to perform the work. The weekly work hours for the three Alliant cleaning assignments totaled 36.5. Two of the Alliant assignments paid \$13.00 per hour. The third paid \$11.00 per hour. Mr. Reaves last performed cleaning work in Centerville on Friday, September 14, 2018. The employer also allowed Mr. Reaves to pick up additional FBG cleaning assignments in other communities when the employer needed help with those assignments due to employee

vacations and so forth. Because Mr. Reaves was already working full-time hours servicing the Centerville accounts, this additional “floating” work provided him with overtime work hours and wages. The employer had a greater amount of such “floating” work available during the summer months. The employer periodically reminded Mr. Reaves that the floating/overtime work was not guaranteed.

On or about September 3, 2018, Labor Day, Mr. Reaves notified Mr. Burmeister that he was going to move to Des Moines and would be seeking a second job. At the time Mr. Reaves provided this notice, he told Mr. Burmeister that he was taking these steps because FBG could not guarantee him overtime work. Mr. Reaves took September 10 and 11, 2018 off to look for new employment in the Des Moines metropolitan area. Mr. Reaves subsequently told Mr. Burmeister that he had found a job in Des Moines and would be starting that new employment on September 17, 2018. September 17, 2018 was a Monday. Mr. Reaves anticipated new employment was a work assignment he had secured through a temporary employment agency. FBG services many Des Moines area businesses. In connection with the discussion regarding Mr. Reaves’ planned move to Des Moines, and in connection with Mr. Reaves’ desire to continue working for FBG, Mr. Burmeister agreed to provide Mr. Reaves with FBG cleaning assignments in Des Moines.

Based on notice from Mr. Reaves that he would no longer be available for work in Centerville once he started his new job in Des Moines, FBG hired a new employee to service the three Alliant accounts in Centerville. The new employee was set to start on Wednesday, September 19, 2018. Given Mr. Reaves’ plan to commence work in Des Moines on September 17, neither the employer nor Mr. Reaves planned for Mr. Reaves to be available to work in Centerville on or after that date.

On September 17, 2018, Mr. Reaves notified Mr. Burmeister that his expected new job in Des Moines had fallen through. Mr. Reaves told Mr. Burmeister that he was available to commence FBG cleaning assignments in Des Moines. Mr. Burmeister decided instead to have Mr. Reaves clean the Centerville Alliant accounts throughout that week and delay start of Des Moines cleaning assignments until the following week. Mr. Reaves decided he did not want to return to the Centerville accounts for another week and refused the directive. In light of Mr. Reaves’ refusal to clean the Centerville accounts during the week of September 17, Mr. Burmeister discharged Mr. Reaves from the employment and barred him from returning for future employment.

Mr. Reaves established a claim for benefits that was effective September 23, 2018. FBG is the sole base period employer in connection with the claim.

#### **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 in the record establishes that Mr. Reaves was discharged from the employment. Prior to September 17, 2018, Mr. Reaves and the employer had mutually agreed to change the conditions of Mr. Reaves’ employment effective September 17. Under that

agreement, Mr. Reaves would discontinue his full-time FBG work in Centerville effective Friday, September 14, 2018 and commence part-time FBG work in Des Moines effective Monday, September 17, 2018. Pursuant to this agreement, neither Mr. Reaves nor the employer had an expectation that Mr. Reaves would remain available for work in Centerville on or after September 17, 2018. This agreement to change the conditions of Mr. Reaves' FBG employment occurred in the context of Mr. Reaves having accepted other full-time employment. The FBG employment came to an end on September 17, 2018, when Mr. Burmeister discharged Mr. Reaves from the employment based on his refusal to comply with the last-minute directive that Mr. Reaves continue to perform work in Centerville for one week beyond the agreed upon transition date.

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).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee’s failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer’s request in light of the circumstances, along with the worker’s reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The weight of the evidence in the record establishes a discharge for no disqualifying reason. Given the parties prior mutual-agreement to transition Mr. Reaves to Des Moines work beginning September 17, Mr. Burmeister’s last-minute directive that Mr. Reaves continue to service the Centerville accounts, rather than start new assignment in Des Moines as agreed, was unreasonable. Mr. Reaves’ refusal of the directive was also unreasonable. Even if the evidence had established that Mr. Burmeister’s last-minute directive was reasonable, the evidence would not indicate a pattern of Mr. Reaves unreasonably refusing reasonable employer directives. Indeed, the evidence indicates Mr. Reaves had hitherto been quite eager to serve the interests of the employer by volunteering for additional work. Mr. Reaves is eligible for benefits, provided he is otherwise eligible. The employer’s account may be charged for benefits.

**DECISION:**

The October 8, 2018, reference 01, decision is modified as follows. The claimant was discharged on September 17, 2018 for no disqualifying reason. The claimant is eligible for benefits, provided he meets all other eligibility requirements. The employer’s account may be charged.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs