

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAVAN N HOUSTON
Claimant

ABCM CORPORATION
Employer

APPEAL NO: 21A-UI-14795-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/04/21
Claimant: Appellant (2)**

Iowa Code § 96.5(2)(a) - Discharge

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 22, 2021, reference 01, decision that held the claimant was disqualified for benefits and the employer's account would not be charged for benefits, based on the deputy's conclusion that the claimant voluntarily quit on April 7, 2021 without good cause attributable to the employer. After due notice, a hearing was held on August 24, 2021. The claimant participated. The employer did not provide a telephone number for the hearing and did not participate. Exhibit A was received into evidence.

ISSUES:

Whether the claimant voluntarily quit without 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: The claimant was employed by ABCM Corporation as a full-time Certified Medication Aide from 2007 until April 7, 2021, when the employer discharged her from the employment. The claimant worked at Harmon House, a three-unit facility that included a rehabilitation unit, a long-term care unit, and a unit for mentally challenged residents. The claimant was assigned to the day shift. Her primary work hours were 6:00 a.m. to 2:00 p.m., but would sometimes work 16-hour shift. Toward the end of the employment, Mary Geiger was the Director of Nursing and the claimant's supervisor.

The separation from the employment was preceded by an incident between the claimant and the Director of Nursing on the morning of April 7, 2021. The claimant reported for work early. The claimant was putting her personal effects away when the Director of Nursing came barging through the door and started yelling at the claimant that the claimant was supposed to be training a coworker that morning. The claimant was unaware that she was supposed to train someone that morning, but was willing to comply with the directive. The Director of Nursing continued to yell at the claimant in the presence of other staff. The claimant felt she was about to cry in response the public humiliation and asked if she could step outside to have a cigarette.

The claimant needed a moment to collect herself after being on the receiving end of the Director of Nursing's anger. The Director of Nursing told the claimant to call her ride and just go home. The Director of Nursing was still raising her voice to the claimant while the claimant was on the phone summoning her fiancé to come collect her from work. Later that morning, a human resources representative called the claimant and stated the management team had decided to terminate the claimant's employment. The claimant had not indicated by word or deed an intention to voluntarily separate from the employment.

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.

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.

The evidence in the record establishes that claimant was discharged and did not voluntarily quit. The employer did not participate and did not present any evidence to rebut the claimant's testimony. The evidence establishes the employer directed the claimant to leave the workplace and then notified the claimant she was discharged from the employment.

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 Iowa Administrative Code rule 871-24.32(4).

The evidence in the record establishes a discharge for no disqualifying reason. The employer did not participate and did not present any evidence to meet its burden of proving a disqualifying separation from the employment. The evidence in the record does not indicate any misconduct on the part of the claimant. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The June 22, 2021, reference 01, decision is reversed. The claimant was discharged on April 7, 2021 for no disqualifying reason. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style.

James E. Timberland
Administrative Law Judge

August 26, 2021
Decision Dated and Mailed

jet/kmj