

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JOHN E BURNHAM

Claimant

APPEAL NO. 18A-UI-04110-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WHIRLPOOL CORPORATION

Employer

OC: 03/04/18

Claimant: Appellant (1)

Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

John Burnham filed a timely appeal from the March 22, 2018, reference 01, decision that disqualified him for benefits and that relieved the employer of liability for benefits, based on the Benefits Bureau deputy's conclusion that Mr. Burnham voluntarily quit on January 31, 2018 without good cause attributable to the employer. After due notice was issued, a hearing was held on April 26, 2018. Mr. Burnham participated. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Exhibits A, B and C were received into evidence.

ISSUE:

Whether Mr. Burnham separated from the employment for a reason that disqualifies him for unemployment insurance 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: John Burnham was employed by Whirlpool Corporation from 1976 until January 31, 2018. Mr. Burnham was a full-time, salaried Technical Consultant. On December 6, 2017, Mr. Burnham received an email message from Global Corporate Communications at Whirlpool Corporation. The message notified Mr. Burnham that he was eligible to participate in a retirement incentive program or Voluntary Retirement Program (VRP), based on his age, his length of service, and his status as a salaried employee. Mr. Burnham is 63 years old and had been planning to work until he reached 65 years old. The employer's email message referenced the employer's goal of reducing its fixed costs by \$150,000,000 "through people and non-people related actions." The message referenced the employer's goal of minimizing the number of involuntary separations. The message indicated that employees who accepted the retirement incentive package would retire effective January 31, 2018 unless otherwise approved. The message set forth the various components of the retirement incentive package and the formula the employer would use to determine the monetary incentives to be offered to each eligible employee. The message indicated that Mr. Burnham would receive an individualized VRP election form via email on December 8, 2018 and would then be welcome to participate in information sessions accompanied by family members and/or advisors. The

message stated that Mr. Burnham would have to “confirm” his decision to participate in the retirement incentive program no later than December 20, 2018. The message closed by restating that the employer was offering a *voluntary* retirement program and cautioned that no one from Whirlpool should speak with Mr. Burnham regarding whether he should or should not participate in the program. The message encouraged Mr. Burnham to consult with his family and financial advisor.

Mr. Burnham subsequently received from the employer a Waiver and Release Agreement. That document began by stating that the document was an exchange of promises between Mr. Burnham and the employer. The first provision stated that the employment would terminate on January 31, 2018. The following provision set forth the various forms of “Transition Assistance” the employer would provide to Mr. Burnham including a substantial lump-sum payment. The document set forth a number of rights Mr. Burnham would be waiving, and the corresponding release he was providing to the employer, as part of the agreement. The document indicated that Mr. Burnham had been given at least 45 days to consider the execution of the agreement and that he would have seven days following his signature date in which to revoke the agreement. Mr. Burnham signed the document on January 17, 2018.

Mr. Burnham continued to work for the employer until the January 31, 2018 separation date referenced in the written agreement. At that time, Mr. Burnham spoke to his supervisor about his desire to stay on a bit longer to finish some projects. The supervisor agreed to discuss that request with appropriate individuals. The employer did not agree to extend the employment beyond January 31, 2018.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.25(24) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs “a” through “i,” and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(24) The claimant left employment to accept retirement when such claimant could have continued working.

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).

The evidence in the record established a voluntary quit without good cause attributable to the employer. The evidence establishes that Mr. Burnham voluntarily separated from the employment effective January 31, 2018 pursuant to his election to participate in the employer's retirement incentive program and the agreement he entered into with the employer. The agreement constituted both a resignation notice and acceptance of the resignation notice. The weight of the evidence establishes that Mr. Burnham could have elected to forego participation in the retirement incentive program and continued in the employment for the foreseeable future. The employer's decision to discharge two of Mr. Burnham's colleagues in February 2018 for reasons unknown to Mr. Burnham does not establish that Mr. Burnham would have met the same fate if had foregone participation in the retirement incentive program. Pursuant to the applicable law, Mr. Burnham is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. Mr. Burnham must meet all other eligibility requirements. The employer's account shall not be charged.

DECISION:

The March 22, 2018, reference 01, decision is affirmed. The claimant voluntarily quit the employment effective January 31, 2018 without good cause attributable to the employer. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs