

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**BRANDON J WILLIAMS**  
Claimant

**APPEAL NO. 20A-UI-12267-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EMPLOYER'S SERVICE BUREAU INC**  
Employer

**OC: 06/14/20**  
**Claimant: Appellant (5)**

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

**STATEMENT OF THE CASE:**

Brandon Williams filed a timely appeal from the September 24, 2020, 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. Williams voluntarily quit on June 11, 2020 without good cause attributable to the employer by being absent three days without notice to the employer. After due notice was issued, a hearing was held on December 3, 2020. Mr. Williams participated and presented additional testimony through Samantha Puckett. Joe Rausenberger represented the employer. Exhibit A was received into evidence.

**ISSUES:**

Whether the claimant voluntarily quit the employment 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: Brandon Williams was employed by Employer's Service Bureau as a contract-laborer assigned to Nestle Purina during two distinct periods. The most recent period of employment began on June 8, 2020 and ended on June 16, 2020, when Joe Rausenberger, Vice President and owner, discharged Mr. Williams from the employment for attendance. Mr. Williams was assigned to the third shift and his regular work hours were 10:30 p.m. to 6:30 a.m., Monday evening through Friday morning. Mr. Williams appeared for shift on Monday, June 8, 2020. On Tuesday, June 9, 2020, Mr. Williams was absent due to a transportation issue and notified the employer at about 7:00 p.m. The transportation issue was a dead six-year-old battery. The employer's policy required that Mr. Williams call the absence reporting number at least an hour prior to the scheduled start of his shift if he needed to be absent. Mr. Rausenberger reviewed the attendance and absence reporting policies with Mr. Williams on June 3, 2020 at the time of the interview and emphasized the need to report for work as scheduled. The employer also provided Mr. Williams with an employee handbook. On Wednesday, June 10, 2020,

Mr. Williams worked his scheduled shift. On Thursday, June 11, 2020, Mr. Williams was absent without notifying the employer.

Mr. Williams was next on the scheduled to work on Monday evening, June 15, 2020. However, the employer removed Mr. Williams from the work schedule after Mr. Williams was absent twice during his first four days of the employment. When Mr. Williams attempted to report for work on Monday, June 15, 2020, the guard told Mr. Williams he could not enter and would need to speak with Mr. Rausenberger. On the morning of June 16, 2020, Mr. Williams called Mr. Rausenberger. At that time, Mr. Rausenberger discharged Mr. Williams from the employment, based on the attendance issues.

#### **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. A claimant who is absent three consecutive days without notice to the employer in violation of the employer's policy is presumed to have voluntarily quit without good cause attributable to the employer. Iowa Admin. Code r. 871-24.25(4).

The evidence establishes a discharge for attendance, rather than a voluntary quit. The claimant did not communicate an intention to sever the employment relationship. The claimant was not absent three consecutive days without notice to the employer.

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).

In order for a claimant's absences to constitute misconduct that would disqualify the claimant from receiving unemployment insurance benefits, the evidence must establish that the claimant's *unexcused* absences were excessive. See Iowa Administrative Code rule 871-24.32(7). The determination of whether absenteeism is excessive necessarily requires consideration of past acts and warnings. However, the evidence must first establish that the most recent absence that prompted the decision to discharge the employee was unexcused. See Iowa Administrative Code rule 871-24.32(8). Absences related to issues of personal responsibility such as transportation and oversleeping are considered unexcused. On the other hand, absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. Tardiness is a form of absence. See *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Employers may not graft on additional requirements to what is an excused absence under the law. See *Gaborit v. Employment Appeal Board*, 743 N.W.2d 554 (Iowa Ct. App. 2007). For example, an employee's failure to provide a doctor's note in connection with an absence that was due to illness properly reported to the employer will not alter the fact that such an illness would be an excused absence under the law. *Gaborit*, 743 N.W.2d at 557.

The evidence in the record establishes a discharge for misconduct in connection with the employment. Within the first four days of the employment, Mr. Williams was absent twice for personal reasons. In the first instance, he was absent because he unreasonably failed to

properly maintain his vehicle and encountered a predictable issue when the six-year-old battery died. Mr. Williams contacted the employer 3.5 hours prior to the scheduled start of his shift. Mr. Williams had sufficient time in which to resolve the transportation issue so that he could get to work, but he did not do that. The absence due to the transportation issue was an unexcused absence under the applicable law. Mr. Williams' no-call/no-show absence was also an unexcused absence. Mr. Williams' appeal letter contradicts Mr. Williams testimony at the appeal hearing. The appeal letter aligns with the employer's version of events. Two unexcused absences within four stays of starting an employment, with one of those absences being a no-call/no-show, are sufficient to demonstrate excessive unexcused absences, as well as an intentional and substantial disregard of the employer's interests. The evidence fails to support Mr. Williams' assertion that the employer allowed employees to be absent once a week without consequences. In any event, Mr. Williams was absent twice the first week. Mr. Williams is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. Mr. Williams must meet all other eligibility requirements. The employer's account shall not be charged for benefits.

**DECISION:**

The September 24, 2020, reference 02, decision is modified with no change in the eligibility for benefits or liability for benefits. The claimant was discharged on June 16, 2020 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits.



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James E. Timberland  
Administrative Law Judge

December 10, 2020  
Decision Dated and Mailed

jet/scn

**NOTE TO CLAIMANT:**

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information on how to apply for PUA, go to <https://www.iowaworkforcedevelopment.gov/pua-information>. **If you do not apply for and are not approved for PUA, you may be required to repay the benefits you have received.**