

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**ANDREW G DORLIAE**  
Claimant

**APPEAL NO. 18A-UI-06552-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WHIRLPOOL CORPORATION**  
Employer

**OC: 05/06/18**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Andrew Dorliae filed a timely appeal from the June 11, 2018, reference 02, 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. Dorliae voluntarily quit on April 5, 2018 without good cause attributable to the employer. After due notice was issued, a hearing was held on July 2, 2018. Mr. Dorliae participated. The employer did not respond to 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 18A-UI-06553-JTT. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to Mr. Dorliae.

**ISSUE:**

Whether Mr. Dorliae 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: Andrew Dorliae began his employment with Whirlpool Corporation in 2012 and last performed work for the employer on or about April 5, 2018. The employment was full-time. In the middle of 2017, Mr. Dorliae began working a shift that started at 5:00 a.m. and that ended at 5:00 p.m. In January 2018, Mr. Dorliae commenced academic studies in Chicago. In connection with starting his academic studies, Mr. Dorliae commenced working the 5:00 a.m. to 5:00 p.m. on Friday, Saturday and Sunday. This shift arrangement made it possible for Mr. Dorliae to pursue his academic studies on other days of the week. This shift arrangement also made it possible for Mr. Dorliae to care for his children during the overnight hours. Mr. Dorliae's children have a medical condition that necessitates such overnight care.

Toward the end of March 2018, the employer notified Mr. Dorliae that the employer was ending the 5:00 a.m. to 5:00 p.m. and moving Mr. Dorliae to an overnight shift, midnight to 7:00 a.m., five days per week. Mr. Dorliae's new work week commenced at midnight Sunday evening going into Monday. Mr. Dorliae's new work week ended on Friday morning at 7:00 a.m. The change in shift created a hardship for Mr. Dorliae. Mr. Dorliae only appeared for three of the new overnight shifts. Mr. Dorliae commenced discussion with Whirlpool management and

human resources in an attempt to get the employer to let him return to work hours that would not conflict with his studies and his parental duties.

At a time when Mr. Dorliae thought he was still engaged in the discussion regarding his work hours, he received paperwork indicating that the employment had been terminated. Mr. Dorliae had not given notice that he intended to quit. At the time Mr. Dorliae's employment ended, he was on light-duty status and participating in physical therapy related to a February 2018 work injury.

## **REASONING AND CONCLUSIONS OF LAW:**

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

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 an involuntary separation from the employment that followed the employer's decision to change Mr. Dorliae's work shift. The employer did not participate in the appeal hearing. Accordingly, the evidence in the record is limited to Mr. Dorliae's testimony and an Iowa Workforce Development computer record, the database readout (DBRO). The evidence in the record establishes an involuntary separation from the employment on about April 5, 2018.

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 employer did not participate in the appeal hearing and did not present any evidence to prove misconduct in connection with the employment. The evidence in the record does not establish misconduct in connection with the employment. Accordingly, the administrative law judge concludes that Mr. Dorliae was discharged on or about April 5, 2018 for no disqualifying reason. Mr. Dorliae is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

Even if the evidence had established a voluntary quit, such quit would have been for good cause attributable to the employer.

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. 871-24.26(1) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire.

"Change in the contract of hire" means a substantial change in the terms or conditions of employment. See *Wiese v. Iowa Dept. of Job Service*, 389 N.W.2d 676, 679 (Iowa 1986). Generally, a substantial reduction in hours or pay will give an employee good cause for quitting. See *Dehmel v. Employment Appeal Board*, 433 N.W.2d 700 (Iowa 1988). In analyzing such cases, the Iowa Courts look at the impact on the claimant, rather than the employer's motivation. *Id.* An employee acquiesces in a change in the conditions of employment if he or she does not resign in a timely manner. See *Olson v. Employment Appeal Board*, 460 N.W.2d 865 (Iowa Ct. App. 1990).

The employer's decision to change Mr. Dorliae's established work shift and established work days had a profoundly detrimental impact on Mr. Dorliae's ability to continue to pursue the academic studies he had started in January 2018 and on his ability to meet his parental responsibilities.

#### **DECISION:**

The June 11, 2018, reference 02, decision is reversed. The claimant was discharged on or about April 5, 2018 for no disqualifying reason. In the alternative, the claimant voluntarily quit for good cause attributable to the employer. The claimant is eligible for benefits, provided he is otherwise eligible. 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