

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CODY A HENDERSON
Claimant

MASON CITY RECYCLING CENTER LTD
Employer

APPEAL 20A-UI-12237-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (5/R)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit
Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Cody Henderson (claimant) appealed a representative's October 2, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits due to voluntarily quitting with the Mason City Recycling Center (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 2, 2020. The claimant participated personally. The employer participated by Thomas Berger, Account.

The claimant offered and Exhibits A, B, and C were received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issues include whether the claimant was separated from employment for any disqualifying reason and whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was rehired and worked from February 19, 2018, to March 3, 2020 as a full-time production worker.

He was absent on March 3 and 4, 2020, for bereavement leave for his wife's grandfather. After this, the claimant became ill. He properly reported his illness to the employer's secretary. The claimant called his physician and reported his symptoms. Testing was not available but his doctor told him to quarantine with Covid-19 symptoms for two weeks. The claimant relayed the information to the secretary. She did not require the claimant to report each day.

The claimant's children and wife became infected. The claimant reported the infection to the doctor and was told to quarantine for a total of six weeks. The claimant reported the information to the secretary. While he was in quarantine, the owner told the claimant to return his uniforms.

The claimant asked why he was fired. The owner said he had called the claimant many times. The claimant showed the owner that no one called him while he was ill. The owner did not respond to the claimant's proof.

The claimant was unable to work until April 1, 2020, because he was ill. He was unable to work during the month of April 2020, because his children were ill. He is unable to work after April 2020, because he is the full-time caretaker for his children.

The claimant filed for unemployment insurance benefits with an effective date of March 15, 2020. His weekly benefit amount was determined to be \$545.00. He filed an additional claim for benefits on April 12, 2020. The claimant received benefits from March 15, 2020, to the week ending September 5, 2020. This is a total of \$12,295.06 in state unemployment insurance benefits after the separation from employment. He received \$545.00 in Pandemic Emergency Unemployment Compensation. He also received \$9,000.00 in Federal Pandemic Unemployment Compensation for the fifteen-week period ending July 25, 2020.

REASONING AND CONCLUSIONS OF LAW:

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).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incident of absence was a properly reported illness which occurred in March 2020. The claimant's absence does not amount to job misconduct because it was properly reported. The employer has failed to provide any evidence of willful and deliberate misconduct which would be a final incident leading to the discharge. The claimant was discharged for quarantining for Covid-19. There was no misconduct.

The next issue is whether the claimant is able and available for work.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23(1) (8) provide:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

- (1) An individual who is ill and presently not able to perform work due to illness.
- (8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. The claimant was quarantined by his physician due to a suspicion of Covid-19. To prevent the spread of a deadly virus, the claimant was quarantined from the workplace. He was not able and available for work and disqualified from receiving unemployment insurance benefits while in quarantine. Benefits are denied from March 15, 2020, through April 1, 2020.

When an employee is spending working hours caring for children, he is considered to be unavailable for work. The claimant is devoting his time and efforts to caring for his children full-time. He is not able to work after April 1, 2020, and benefits are denied.

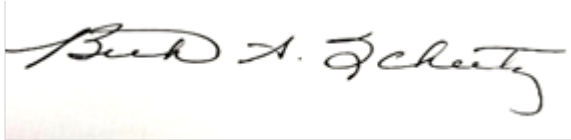
The issue of whether claimant has been overpaid unemployment insurance benefits, Pandemic Emergency Unemployment Compensation, and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The representative's October 2, 2020, decision (reference 01) is modified with no effect. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible. The claimant is not able and available for work as of March 15, 2020.

Please notify the department immediately if the conditions change regarding your ability to work and you believe the disqualification can be removed.

The issue of whether claimant has been overpaid unemployment insurance benefits, Pandemic Emergency Unemployment Compensation, and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

A handwritten signature in black ink that reads "Beth A. Scheetz". The signature is written in a cursive style and is positioned above a horizontal line.

Beth A. Scheetz
Administrative Law Judge

December 8, 2020
Decision Dated and Mailed

bas/scn