

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ELIZABETH K CONLEY
Claimant

APPEAL NO. 21A-UI-08007-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

**OC: 02/14/21
Claimant: Appellant (2)**

Iowa Code Section 96.5(2)(a) – Discharge
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant, Elizabeth Conley, filed a timely appeal from the March 17, 2021, reference 03, decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on the deputy's conclusion that the claimant voluntarily quit on September 15, 2020 without good cause attributable to the employer and due to a non-work related medical condition. After due notice was issued, a hearing was held on June 1, 2021. The claimant participated. Jessica Wade, Human Resources Business Analyst, represented the employer. Exhibits A and B were received into evidence. The administrative law judge took official notice of following Agency administrative records: WAGE-A and KCCO.

ISSUES:

Whether the claimant voluntarily quit without good cause attributable to the employer, was laid off, or was discharged for misconduct in connection with the employment.

Whether the claimant was able to work and available for work during the period of February 14, 2021 through April 10, 2021.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed by the University of Iowa Hospitals & Clinics as a Staff Chaplain specializing in behavioral health. The claimant began her employment in January 2015 in a half-time position. Effective April 1, 2015, the claimant's position became three-quarter time position. In September 2016, the claimant's position became full-time. Effective March 1, 2018, the claimant's position became .8 FTE. The claimant continued to perform work in the .8 FT position until September 15, 2020. The claimant served mostly patients with serious mental illness. The claimant's core work hours in the .8 FTE position were 8:00 a.m. to 4:00 p.m. Tuesday through Friday. The claimant's regular duties also included three 24-hour on-call shifts per month. There were 10 to 12 other staff chaplains who shared in the on-call work.

In 2019, the claimant's psychiatrist provided the employer with a note in support of workplace accommodations based on the claimant's diagnoses of chronic insomnia, as well as depression and anxiety exacerbated by the claimant's irregular on-call work hours. The claimant and her doctor presented the request for accommodations as requests pursuant to the Americans With Disabilities Act (ADA). The claimant and her doctor requested that the claimant be allowed to work only day-time on-call hours and that the on-call work be limited to one time per month. The employer provided the claimant with a 90-day temporary accommodation that was renewed twice. The employer decided it could not provide a permanent accommodation. The claimant continued to work under the accommodations until September 15, 2020. During the period of the roughly nine-month temporary accommodations, the claimant sought, but did not secure other employment within the university system pursuant to the University's ADA referral program.

On September 15, 2020, the claimant's supervisor and the Director of Patient Experience summoned the claimant to a meeting at which the employer told the claimant that her temporary accommodation and her time in the ADA referral program expired on September 8, 2020. The employer notified the claimant that she would be allowed to exhaust any remaining vacation and sick leave benefits and then would be separated from the employment. The employer directed the claimant to leave the workplace and to notify the human resources personnel of her departure. The claimant requested a letter memorializing the employer's directive that she leave the workplace. The employer promptly provided the requested letter. At no time had the claimant expressed an interest in voluntarily separating from the employment.

Upon being directed to leave the workplace, the claimant consulted with her psychiatrist. The claimant did not want to lose her employment. Though the claimant's doctor had diagnosed a sleep disorder, had advised he claimant to seek the accommodations, and continued to deem the accommodations necessary, the doctor drafted a memo at the claimant's request. The September 23, 2020 memo stated as follows:

I am contacting you regarding my patient Elizabeth Conley, who is currently under my medical care.

It has come to my attention that the University has denied Ms. Conley's appeal for ADA accommodation to her work schedule. Although this is not an ideal situation, Ms. Conley is medically capable of fulfilling all of her job requirements. I am therefore withdrawing my request for ADA accommodations.

On September 23, 2020, the claimant forwarded the medical release to the employer with a request to return to her chaplain duties.

On October 16, 2020, the employer responded and essentially reiterated the information provided on September 15, 2020. The response reaffirmed that the claimant's employment as a staff chaplain ended in September 2020.

On December 1, 2020, the claimant filed a complaint with the Equal Employment Opportunity Commission.

The claimant exhausted her leave benefits on or about February 26, 2021. In the meantime, the claimant continued to look for work within the University system.

The claimant established an original claim for unemployment insurance benefits that was effective February 14, 2021. Iowa Workforce Development set the weekly benefit amount at

\$493.00. The claimant made weekly claims for each of the weeks between February 14, 2021 and April 10, 2021. The claimant made two employer contacts during each claim week, except for the week that ended March 6, 2021, when she made three contacts. The claimant searched for new employment both within and outside of the University system. The claimant received holiday compensatory pay for the week that ended February 20, 2021 that exceeded her weekly benefits amount plus \$15.00. The claimant received a combination of vacation pay and holiday compensatory pay for the week that ended February 27, 2021 that exceeded her weekly benefit amount plus \$15.00. ‘

The claimant discontinued her weekly claims following the week that ended April 10, 2021. She had accepted and soon started new employment with the University of Iowa as a full-time, temporary, Crisis Counselor at the Center for Disabilities and Development.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 871-24.1(113) characterizes the different types of employment separations 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 fails to establish a voluntary quit and instead indicates a discharge. At no time did the claimant express a desire or intention to voluntarily separate from the employment. At no time did the claimant engage in any overt act to sever the employment relationship. Rather, the employer initiated the separation by directing the claimant on September 15, 2020 to leave the workplace and by telling the claimant that her position and duties were no longer available. In addition, the employer placed the claimant on notice that once the employer had paid her for all accrued leave benefits, there would be no further work unless the claimant on her own applied for and was offered another position in another department. The claimant's desire and intention to remain in the employment is further reflected in the steps the claimant took to have her doctor draft a memo withdrawing the claimant's

request for reasonable accommodation. The employer rejected that overture and thereby reaffirmed the employer's decision to sever the employment relationship. Whether one concludes the separation occurred on September 15, 2020 or on February 26, 2021, the separation took the form of a discharge. The discharge was based on the claimant's request for reasonable accommodation in light of her health condition and the employer's decision not to extend the accommodation beyond September 15, 2020.

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 Iowa Administrative Code rule 871-24.32(4).

The evidence in the record establishes a discharge that was not based on misconduct in connection with the employment, but was instead for no disqualifying reason. The discharge decision was based on the employer's decision no longer meet the claimant's need for reasonable accommodation of her health condition. An employer has an obligation to provide an employee with reasonable accommodations that enable the employee to continue in the employment. See *Sierra v. Employment Appeal Board*, 508 N.W. 2d 719 (Iowa 1993). The claimant's psychiatrist had determined that the amount and timing of the on-call work negatively impacted the claimant's multiple health issues. The claimant remained available to perform the vast majority of her regular duties, including some but not all of the on-call duties. The employer demonstrated over the course of nine months that the employer could in fact provide the reasonable accommodation without undue hardship. The employer simply decided to terminate the accommodation. The claimant in no manner demonstrated a willful or wanton disregard of the employer's interests. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

The question of whether the claimant was able to work and available for work during the period of February 14, 2021 through April 10, 2021 is also before the administrative law judge pursuant to the hearing notice.

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(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required

to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The claimant was both able to work and available for work during the period of February 14, 2021 through April 10, 2021. Prior to establishing the unemployment insurance claim, the claimant had demonstrated that she was available for work during her day shift hours. Prior to establishing the claim, the claimant's doctor had released the claimant to work without restrictions. During the period for which the claimant made weekly claims, she engaged in an actively and earnest search for new employment that ultimately led to her securing a new full-time position. The claimant discontinued her claim for benefits in connection with securing that new position.

DECISION:

The March 17, 2021, reference 03, decision is reversed. The claimant was discharged for no disqualifying reason. Based on the non-disqualifying discharge, the claimant is eligible for benefits, provided the claimant is otherwise eligible, and the employer's account may be charged for benefits. The claimant was able to work and available for work during the period of February 14, 2021 through April 10, 2021.



James E. Timberland
Administrative Law Judge

June 14, 2021
Decision Dated and Mailed

jet/scn