

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PAULA R TRUE
Claimant

AADG INC
Employer

APPEAL 18A-UI-09229-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/12/18
Claimant: Appellant (2)

Iowa Code § 96.5(2)(a) – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Admin Code r. 871-24.32 – Discharge for Misconduct
Iowa Admin Code r. 871-24.25(35) – Voluntary Quit Without Good Cause

STATEMENT OF THE CASE:

Paula True, Claimant, filed an appeal from the August 29, 2018, (reference 01) unemployment insurance decision that denied benefits because she voluntarily quit work with AADG, Inc. due to a non-work-related illness or injury. The parties were properly notified of the hearing. A telephone hearing was held on September 24, 2018 at 11:00 a.m. Claimant participated. Employer participated through Gina Bray, Human Resources Generalist. Claimant's Exhibit A was admitted.

ISSUE:

Whether Claimant's separation was a voluntary quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a stain line operator with AADG, Inc. from January 21, 2006 until her employment ended on February 2, 2018. (Claimant Testimony; Bray Testimony) Claimant worked Monday through Friday from 7:00 a.m. until 5:00 p.m. and on some Saturdays. (Claimant Testimony) Claimant's direct supervisor was Nikki Woolery, Manager. (Bray Testimony)

On February 4, 2018 while not at work, claimant fell and broke a finger on her right hand. (Claimant Testimony) Claimant's doctor provided a statement that claimant was not able to return to work until further notice. (Claimant Testimony) Claimant saw her doctor regularly and received updated statements that she was not able to return to work until further notice. (Claimant Testimony) Claimant provided the doctor's statements to her supervisor (there were no human resources employees at this time) as she received them. (Claimant Testimony) Between February 2018 and August 2018, claimant provided employer with approximately five doctor's statements. (Claimant Testimony)

Claimant received a telephone call from a co-worker on July 31, 2018 notifying claimant that her job had been posted for bid. (Claimant Testimony) Claimant called her supervisor on August 1, 2018 to ask about the status of her job. (Claimant Testimony) Claimant's supervisor told Claimant to come to the office the following day to speak to the plant manager. (Claimant Testimony) On August 2, 2018, claimant met with the plant manager. (Claimant Testimony) The plant manager told claimant that he would meet with human resources, make a decision and follow up with claimant. (Claimant Testimony) On August 3, 2018, the plant manager called claimant and told her that she was terminated because she exhausted her short-term disability leave. (Claimant Testimony; Bray Testimony) On August 8, 2018, claimant was released by her doctor to return to work with no restrictions. (Claimant Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not quit her employment but was discharged from employment for no disqualifying reason. Benefits are allowed as long as claimant is otherwise eligible.

Iowa Code section 96.5(1)(d) 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. But the individual shall not be disqualified if the department finds that:

d. The individual left employment because of illness, injury, or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

Iowa Admin. Code r. 871-24.25(35) 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:

(35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- a. obtain the advice of a licensed and practicing physician;
- b. Obtain certification of release of work from a licenses and practicing physician;
- c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- d. fully recover so that the claimant could perform all of the duties of the job.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). The claimant has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer. Iowa Code § 96.6(2).

Claimant had no intention of terminating her employment relationship with AADG, Inc. Furthermore, claimant left her employment due to her non-work-related injury, obtained the advice of a physician, notified her employer of her absence and provided updates to her employer regarding her absence from work. Claimant did not return to her employer to offer her services when she recovered and was released for work, because she had already been terminated. The separation was not a voluntary quit; it was a discharge.

Iowa Code section 96.5(2)(a) provides:

An individual shall be *disqualified for benefits*:

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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. The issue is not whether the employer

made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee*, 616 N.W.2d at 665. Absences due to properly reported illness or injury cannot constitute job misconduct because they are not volitional. *Cosper*, 321 N.W.2d at 6.

The reason employer gave for claimant's termination was that claimant exhausted her short-term disability leave. In spite of the expiration of the employer's leave period, claimant was still under medical care and had not been released to return to work as of the date of separation. Furthermore, claimant had not been notified that her employment would be terminated by a certain date, if she was not released to return to work. Claimant's failure to return to work before the expiration of her leave period was not misconduct. The employer has not established a disqualifying reason for separation. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The August 29, 2018, (reference 01) unemployment insurance decision is reversed. The claimant did not quit but was discharged for no disqualifying reason. Benefits are allowed if the claimant is otherwise eligible.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/rvs