

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JASON L DANIELS**

Claimant

**WELLS FARGO BANK NA**

Employer

**APPEAL 21A-UI-19537-DH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/04/21**

**Claimant: Appellant (2R)**

Iowa Code § 96.5(1) - Voluntary Quit  
Iowa Code § 96.5(2)a - Discharge for Misconduct  
Iowa Admin. Code r. 871-24.25(4) - Absent Three Days with no Notice

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 26, 2021, (reference 01) unemployment insurance decision that denied benefits based upon his voluntary quit on June 16, 2021 for failing to report to work for three days in a row and not notifying their employer of the reason (no call/no show). The parties were properly notified about the hearing. A telephone hearing was held on October 27, 2021. Claimant, Jason Daniels, participated. Employer, Wells Fargo Bank NA, failed to respond to the hearing notice and provide a telephone number at which they could be reached for the scheduled hearing. Judicial notice of the administrative file was taken.

**ISSUE:**

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's first day of work was October 31, 2005 and his last day of work was June 2, 2021. He was working remotely at Fort Pierce, Florida, when law enforcement came to his door and arrested him. He was in the custody of law enforcement starting June 2, 2021 in Florida, through being extradited to Iowa, and eventually bonding out of custody on June 16, 2021. When he was arrested, they did not allow him to contact anyone to advise them what was going on, but immediately handcuffed him and removed him from where he was. The jail would not allow him to look up any phone numbers on his cell phone and he does not know the numbers offhand. With many working remotely, he did not remember the personal cell numbers he needed as well. These phone numbers are not in phone books and calling information for a specific employee for Wells Fargo, as large as it is and the many locations it is didn't work. Claimant is single, did not know anyone in the area to call to assist him (in Florida). The two numbers he knows are his estranged wife (who is the party who got him arrested) who would not help and his elderly father who would not have known who to call at Wells Fargo. Then there is the issue of when one is in jail, the calls that would be made are collect calls to someone who has to accept the charges.

Claimant was in the St. Lucie County jail for 12 days and then brought back to the Linn County jail in Iowa, where he bonded out on June 16, 2021. He immediately bought a new cell phone and was able to retrieve all of his contacts and phone numbers. He called his boss the first thing on June 17, 2021 to learn his employment had already been terminated and that a letter was being sent to him informing him of the details. The termination letter was dated June 16, 2021, but claimant did not receive it until several weeks later. Claimant was discharged for not calling in and not showing for work. Claimant was not aware of any policy regarding no call no show for three days would result in a dismissal. Furthermore, claimant would have called if he would have been granted access to his cell phone for phone numbers. Claimant advises that while charges are pending, he has plead not guilty and a pre-trial conference is set for October 28, 2021, and with charges are pending, he keeps getting turned down for employment while looking.

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

For the reasons that follow, the administrative law judge concludes claimant's separation from employment was not for a disqualifying reason.

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 individual shall be disqualified for benefits 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.

871 IAC 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.

Iowa Admin. Code r. 871-24.25(4) 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:

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). 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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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 employer failed to participate in this hearing. There is no evidence regarding whether the employer has a policy regarding no call no shows nor any evidence that claimant was aware of this policy. While employer may have had a good reason to terminate claimant, there was not a disqualifying reason regarding a voluntary quit for being absent for three days without notice. As stated above, the employer failed to meet their burden of proof.

**DECISION:**

The August 26, 2021, (reference 01) unemployment insurance decision is **REVERSED**. Claimant's separation from employment was for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

**REMAND:**

The issue of whether claimant is disqualified due to incarceration, under Iowa Code Section 96.5(11) is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination. The undersigned was not able to seek waiver from the parties regarding notice on the above issue, since only one party participated in the hearing.

  
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Darrin T. Hamilton  
Administrative Law Judge

November 9, 2021  
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Decision Dated and Mailed

dh/kmj