

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KODI L STONE

Claimant

LIFESPACE COMMUNITIES INC

Employer

APPEAL 21A-UI-25645-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/24/21

Claimant: Appellant (2)

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

Iowa Code § 96.5(1) – Voluntary Quit

Iowa Code § 96.5A – Refusal of COVID-19 vaccination no disqualification

STATEMENT OF THE CASE:

Kodi L Stone, the claimant/appellant, filed an appeal from the November 15, 2021, (reference 01) unemployment insurance (UI) decision that denied benefits because of an October 22, 2021 voluntarily quit for personal reasons. The parties were properly notified of the hearing. A telephone hearing was held on January 20, 2022. Ms. Stone participated and testified. The employer participated through April Muhlbauer, human resources generalist. Claimant's Exhibits A and B were admitted as evidence.

ISSUE:

Did Ms. Stone voluntarily quit without good cause attributable to the employer, was she discharged for disqualifying, job-related misconduct, or was she discharge for refusing the COVID-19 vaccination?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Stone began working for the employer, a company that owns senior living facilities, on November 18, 2019. She worked as a full-time human resources support specialist. Her employment ended on October 22, 2021.

The employer issued a COVID-19 vaccination policy on September 1, 2021, which required employees and residents to receive the COVID-19 vaccine and the flu vaccine as of October 1, 2021 and provide written proof of said vaccines. The policy provides two exemptions: 1) sincerely held religious beliefs, practices or observances, and 2) medical condition or disability. The policy provides that employees who do not comply with the policy are subject to discipline. Ms. Stone received a copy of the policy.

The employer asked employees to let their supervisor know whether or not the employee would comply with the policy. Ms. Stone told her supervisor on September 30 that she would not be getting the COVID-19 vaccine. Ms. Stone had received the flu vaccine in the Fall of 2020 per

the employer's policy. Ms. Stone did not apply for either one of the exemptions because she did not believe that the exemptions applied to her. In late August, Ms. Stone knew the COVID-19 vaccine policy was about to be issued so she had asked the employer if she would work remotely. The employer denied her request.

Ms. Stone chose to not receive the COVID-19 vaccine because she does not understand the research behind the COVID-19 vaccine, she is not comfortable with the evidence of the COVID-19 vaccine's effectiveness, and she understood that some doctors advised the public to take the vaccine and some doctors advised the public to not take the vaccine. Furthermore, Ms. Stone felt that she did not need to receive the COVID-19 vaccine since she is not in a high risk category for COVID-19, wore a face mask at work, social distanced at work, completed the employer's daily questionnaire regarding COVID-19 symptoms, and had her temperature take daily at work.

On October 20, the employer gave Ms. Stone a letter telling her that since she was not in compliance with the employer's COVID-19 vaccine policy her employment would be terminated as of October 22. Ms. Stone's employment was terminated on October 22

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:.

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.

Iowa Code section 96.5A, which went into effect on October 29, 2021, provides:

Notwithstanding any other provision of this chapter to the contrary, an individual who is discharged from employment for refusing to receive a vaccination against COVID-19, as defined in section 686D.2, shall not be disqualified for benefits on account of such discharge.

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.

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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. Given the ongoing, global COVID-19 vaccine, and the industry in which the employer operates, the employer's COVID-19 policy, with its two exemptions, is a reasonable work rule. The employer has presented credible evidence that Ms. Stone refused to receive the COVID-19 vaccination after having been warned that non-compliance would result in discipline. Ms. Stone followed the employer's flu vaccine policy and received the flu vaccine, but she chose not to follow the employer's policy regarding the COVID-19 vaccine so the employer terminated her employment. The employer terminated Ms. Stone's employment before October 29, 2021, when Iowa Code 96.5A went into effect. Therefore, Iowa Code 96.5A is of no effect in this matter. The employer has established disqualifying, job-related misconduct. Therefore, benefits are denied.

DECISION:

The November 15, 2021, (reference 01) unemployment insurance decision is affirmed. Ms. Stone was discharged from employment due to disqualifying, job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Daniel Zeno
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February 17, 2022
Decision Dated and Mailed

dz/kmj