

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TAMIKA R BROWN
Claimant

APPEAL 22R-UI-08213-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SEDGWICK CLAIMS MANAGEMENT
SERVICE**
Employer

OC: 09/05/21
Claimant: Appellant (2)

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit

STATEMENT OF THE CASE:

On October 14, 2021, the claimant/appellant filed an appeal from the October 11, 2021, (reference 02) unemployment insurance decision that denied benefits based on claimant voluntarily quitting on September 3, 2021, because of a non-work related illness or injury. A hearing was scheduled to be held on December 6, 2021. Claimant did not appear and a default decision was entered. Claimant appealed the decision to the Employment Appeal Board (EAB). On March 14, 2022, the EAB remanded the appeal back to the Administrative Law Judge for hearing. The parties were properly notified about the hearing. A telephone hearing was held on May 18, 2022. Claimant participated. Employer did not call in to participate. Administrative notice was taken of claimant's unemployment insurance benefits records.

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 began working for employer on August 27, 2017. Claimant last worked as a full-time ADA and Back to Work Specialist.

Claimant had a brain tumor and had to undergo surgery. Claimant went on medical leave beginning in October 2020. Claimant returned to work on January 27, 2021. Claimant was having issues with her typing and went back on medical leave beginning March 8, 2021. Claimant was on medical leave and was scheduled to return to work on September 7, 2021. On September 4, 2021, claimant received a letter informing her they would no longer be holding her job for her and that she no longer worked for the employer. Claimant was separated from the employer on September 4, 2021.

Claimant had no prior disciplinary warnings prior to her separation.

Claimant was released to work on September 7, 2021. Claimant had a restriction that required her to take a 15-minute break every two hours. The restriction also limited her to taking 30 calls per day instead of the 200-300 calls she normally took each day.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not quit but was discharged for no disqualifying reason.

Iowa Code section 96.5(1)*d* provides:

An individual shall be disqualified for benefits:

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 for work from a licensed 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.

Disqualification from benefits pursuant to Iowa Code § 96.5(1) requires a finding that the quit was voluntary. *Geiken v. Lutheran Home for the Aged Ass'n*, 468 N.W.2d 223, 226 (Iowa 1991). An absence is not voluntary if returning to work would jeopardize the employee's health. A physician's work restriction is evidence an employee is not medically able to work. *Wilson Trailer Co. v. Iowa Emp't. Sec. Comm'n*, 168 N.W.2d 771, 775-6 (Iowa 1969).

Where an employee did not voluntarily quit but was terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer services pursuant to the subsection d exception of Iowa Code section 96.5(1). *Prairie Ridge Addiction Treatment Servs. v. Jackson and Emp't Appeal Bd.*, 810 N.W.2d 532 (Iowa Ct. App. 2012). The claimant is not required to return to the employer to offer services after the medical recovery because she has already been involuntarily terminated from the employment while under medical care. Although an employer is not obligated to provide light duty work for an employee whose illness or injury is not work related, unless reasonable accommodation can be offered, the involuntary termination from employment while under medical care was a discharge from employment. Thus, the burden of proof shifts to the employer.

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 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(7) provides:

(7) *Excessive unexcused absenteeism.* Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

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). 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). Absences due to properly reported illness cannot constitute work-connected misconduct since they are not volitional, even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy. Iowa Admin. Code r. 871-24.32(7); *Cosper*, supra; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007).

In this case the claimant was terminated prior to the end of her medical leave. Additionally, claimant was still under medical care and had not yet been released to return to work without restrictions as of the date of separation. No disqualifying reason for the separation has been established. Claimant has been released to return to work effective September 7, 2021. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The October 11, 2021, (reference 02) unemployment insurance decision is REVERSED. The claimant did not quit but was discharged for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The benefits withheld based upon this separation shall be paid to claimant.



Carly Smith
Administrative Law Judge

June 15, 2022
Decision Dated and Mailed

cs/kmj