

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

JESSICA J BRIGGS
Claimant

APPEAL 22A-UI-06474-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JAM EQUITIES OF ALTOONA LLC
Employer

**OC: 01/23/22
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The claimant, Jessica Briggs, filed an appeal from the February 21, 2022, (reference 02) unemployment insurance decision that denied benefits based upon her voluntary resignation. The parties were properly notified about the hearing. A hearing was scheduled for April 22, 2022. This administrative law judge granted a postponement of that hearing because the employer had mandatory inspections that week that would prevent its witnesses from attending the hearing.

A telephone hearing was held on May 11, 2022. This administrative law judge postponed the hearing date because the employer stated District Manager Ricco Mitchell would be unable to attend due to his wife's emergency surgery.

A rescheduled hearing was set for June 3, 2022. The claimant participated and testified. The employer participated through District Manager Ricco Mitchell. The employer was represented by Mariah Sekalski, attorney-at-law. Exhibits 1, 2, 3, A, B, C, D, E, F, G, H, and I were admitted into the record. Official notice was taken of the administrative file.

ISSUE:

Was the separation a layoff, discharge for misconduct or 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:

The claimant was employed full-time as a general manager in training from December 11, 2021, until she was separated from employment on January 23, 2022, when she was terminated. The claimant's immediate supervisor was District Manager Ricco Mitchell.

The employer has an employee handbook which lists its various policies. On such policy reads in pertinent part, "Any team member who is absent from work without notice for two or more

consecutive work days may be considered to have resigned from his or her employment unless (1) the absence is excused, and (2) the team member gave proper notice of the absence.” The employer provided a copy of the employee handbook. (Exhibit 1) The claimant received a copy of the employer’s employee handbook on December 10, 2021. (Exhibit 2)

On January 23, 2022, the claimant was working a shift from 10:00 a.m. to 10:00 p.m. The claimant was concerned because she had not seen Mr. Mitchell and she did not yet know how to do many things in the store. At 4:30 p.m., the claimant informed Mr. Mitchell over the phone that the restaurant was running out of items. Mr. Mitchell and the claimant began to argue over whether she should be able to handle these tasks without his active supervision. Mr. Mitchell said the claimant needed to take initiative and expressed that he did not know what she thought he needed to train. Mr. Mitchell told the claimant she needed to leave for the day. The claimant provided a call record showing this call occurred. (Exhibit I)

At 4:57 p.m. on January 23, 2022, the claimant called Owner Asif Poonja and informed him that she believed she had been terminated by Mr. Mitchell. The claimant provided a copy of this conversation. (Exhibit H) Mr. Poonja said he would check with Mr. Mitchell and let the claimant know. This was the last conversation the claimant had with Mr. Poonja. The employer did not make Mr. Poonja available to testify.

On January 23, 2022 at 9:32 p.m., the claimant received an automatic message from the employer’s human resources department informing her that she did not have any scheduled shifts for the week beginning on January 24, 2022. Relying on this information, the claimant did not report to work for that week. The claimant provided a copy of these text messages. Then Mr. Mitchell came in and relieved the claimant from her shift.

On January 26, 2022, the claimant decided to return her keys because she still had not heard from Mr. Poonja and she was not scheduled for that week. In that context, the claimant believed she had been terminated based on the conversation that occurred on January 23, 2022.

On January 26, 2022, Mr. Mitchell determined the claimant had resigned from her position because she had not reported to work on January 24, 2022 or January 25, 2022. He also reasoned that she quit because she left her keys.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant’s separation from the employment was not disqualifying.

Iowa Code section 96.5(1) 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.

Iowa Admin. Code r. 871-24.25 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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's testimony and exhibits more credible than the employer's testimony and exhibits.

First, Mr. Mitchell authenticated the claimant's exhibit showing she received scheduling information via text message on Sunday night informing her that she was not scheduled for the week in question. The employer provides a handwritten schedule that contradicts this information. In light of this discrepancy, the administrative law judge finds the claimant's scheduling information more credible than the handwritten one provided by the employer.

Second, the administrative law judge finds the claimant's recounting of the awkward conversation occurring on January 23, 2022 partially credible in contrast with Mr. Mitchell's testimony that the conversation occurred earlier. He makes this finding primarily because the claimant provided call logs showing conversations occurred around the time she alleged with Mr. Mitchell and Mr. Poonja. The administrative law judge does not find the claimant's allegation that she was informed of her termination during this conversation credible. He makes this finding because this is inconsistent with her testimony that she reasonably assumed she was terminated. If Mr. Mitchell had unambiguously informed her of her termination on January 23, 2022, there would have been no reason to call Mr. Poonja. Instead, the administrative law judge finds Mr. Mitchell's testimony credible on this point that he merely informed her she was done for that day.

The employer contends the claimant quit for two reasons, (1) that the claimant showed her intent to separate the employment relationship by leaving her keys, and (2) the claimant did not report to work for three consecutive days and was considered to have voluntarily resigned according to a company rule. The administrative law judge rejects both of these arguments because the claimant has provided credible evidence she did not intent to separate and she was not scheduled.

The administrative law judge rejects the first point because he finds the claimant reasonably returned the keys because she thought she had been terminated. Mr. Mitchell sent her home before the end of her shift on January 23, 2022. The claimant was also not scheduled for the week in question.

As stated above, the claimant provided authenticated scheduling information showing she was not scheduled for that week. Needless to say, the rule above requires someone to be scheduled to work to assume their absence is evidence of their intention to quit. The claimant received this information at 9:32 p.m. on a Sunday. The employer contends the claimant was required to check the paper schedule posted in the store to confirm this was the case. The administrative law judge does not see anything in the employee handbook stating this scheduling information must be confirmed by a handwritten paper posted schedule. Furthermore, it is unreasonable for an employer to expect an employee to be skeptical of such information or risk being separated from employment. Finally, even assuming arguendo that the claimant was scheduled, Mr. Mitchell separated her on January 26, 2022, so there would not be circumstances to satisfy this rule.

Since the claimant did not quit, the administrative law judge will now evaluate the case as a discharge case.

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.

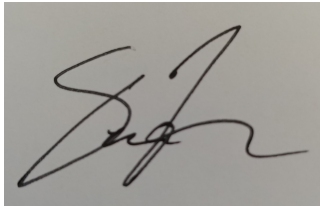
This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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).

The employer terminated the claimant because she did not report to work on days she was not scheduled to work. While the employer is free to terminate whomever it wants, an employee must be scheduled to work for their absence to be part of a course of disqualifying misconduct. Benefits are granted.

DECISION:

The February 21, 2022, (reference 02) unemployment insurance decision is reversed. The claimant was separated from employment for no disqualifying reason. Benefits are granted.



Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

August 25, 2022
Decision Dated and Mailed

smn/kmj

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiere firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.