

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ADBULAHI A KASSIM
Claimant

OPTIMAE LIFESERVICES INC
Employer

APPEAL 21A-UI-11604-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/28/21
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Abdulahi A Kassim, the claimant/appellant filed an appeal from the April 13, 2021, (reference 04) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 13, 2021. Mr. Kassim participated and testified. The employer did not register for the hearing and did not participate.

ISSUE:

Was Mr. Kassim discharged for disqualifying, job-related misconduct or did he 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: Mr. Kassim began working for the employer in 2016. He worked as a full-time direct support professional at a group home. His employment ended on February 28, 2021.

In December 2020, Mr. Kassim's family in Kenya contacted him about a family issue. Mr. Kassim needed to return to Kenya. Mr. Kassim told the employer and they told him he could use his paid-time-off (PTO). Mr. Kassim went to Kenya. He was scheduled to return in late December 2020/early January 2021. Due to travel restrictions because of the COVID-19 pandemic, his return was delayed. Mr. Kassim informed the employer. Mr. Kassim returned to the United States on, or about, January 22, 2021. At that time, Mr. Kassim tested positive for COVID-19. He self-quarantined for 18 days because he was experiencing symptoms. He called the employer three or four time but no one answered. He left a voice message each time explaining the situation. The employer did not call him back.

On February 10, Mr. Kassim returned to work. His supervisor told him that he no longer had a job at the group home and that he needed to call the employer. Mr. Kassim's phone number changed around this time. Mr. Kassim called the employer about work at another group home. He gave the employer his new number. The employer told him they would call him back. They did not. Mr. Kassim filed his initial claim effective February 28, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Kassim did not quit, but he was discharged from employment for no 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.

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).

871 IAC 24.32(4) provides:

Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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.

In this case, Mr. Kassim kept the employer informed about his travel delay and his self-quarantine. He also called the employer, as instructed by his supervisor, after the supervisor told him that he did not have a job at the group home. Mr. Kassim did not quit. The employer terminated his employment when they did not contact him. The employer did not participate in the hearing and provided no evidence to establish misconduct on the part of Mr. Kassim. The employer has failed to meet its burden. Benefits are allowed.

DECISION:

The April 13, 2021, (reference 04) unemployment insurance decision is reversed. Mr. Kassim was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



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July 22, 2021
Decision Dated and Mailed

dz/kmj