

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**STEPHANIE A KOSMAN-BAKER**  
Claimant

**APPEAL 20A-UI-11136-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MONROE CARE CENTER INC**  
Employer

**OC: 04/12/20  
Claimant: Appellant (4)**

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Iowa Code § 96.4(3) – Eligibility – Able to and Available for Work  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

On September 9, 2020, Stephanie Kosman-Baker (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated August 31, 2020 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on March 5, 2020 for personal reasons.

A telephone hearing was held on October 30, 2020. The parties were properly notified of the hearing. The claimant participated personally. Monroe Care Center Inc. (employer/respondent) participated by Administrator Payten Knowles. Director of Nursing Megan Hulbert participated as a witness for employer.

Claimant's Exhibits 1-3 were admitted. Official notice was taken of the administrative record.

**ISSUE(S):**

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant was hired to work for employer part-time as an LPN. Claimant's first day of employment was May 15, 2019. The last day claimant worked on the job was January 6, 2020. Claimant's immediate supervisor was Hulbert. Claimant separated from employment on March 5, 2020. Claimant was discharged on that date.

Claimant moved to PRN status on January 6, 2020. The shift claimant had been working was eliminated and claimant declined to take the other available shifts, as they conflicted with her two other jobs. Claimant did not pick up any shifts after moving to PRN status. Employer discharged claimant because she did not pick up a shift every 30 days, which employer's policies provide will

be considered a voluntary quit. Claimant was not aware of this policy and had no intention of resigning.

Claimant was not available for work from the original claim date, April 12, 2020 and continuing to present. Claimant was not available for work because she was caring for her children. Claimant stayed home to care for the children due to the pandemic. Specifically, claimant's children were unable to attend school and claimant's husband was unavailable to care for them. Claimant hopes to be available for work again beginning November 2, 2020, although it is unclear if she will be.

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

For the reasons set forth below, the decision dated August 31, 2020 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on March 5, 2020 for personal reasons is MODIFIED in favor of appellant. Claimant's separation from employment was not disqualifying. However, she is not available for work and therefore ineligible for benefits from the benefit week ending April 18, 2020 and continuing to date.

As an initial matter, the administrative law judge finds claimant did voluntarily quit. She did not have the option of remaining employed, nor did she express intent to terminate the employment relationship. Furthermore, employer has not established that claimant knew if she did not work at least one shift every 30 days that she would be considered to have resigned.

Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 provides in relevant part:

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).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

Employer has not carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2). There is no evidence indicating claimant was discharged due to substantial job-related misconduct. As such, claimant's separation from employment was not disqualifying.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable

work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Claimant was not available for work from the original claim date, April 12, 2020 and continuing to present. Claimant was not available for work because she was caring for her children. Claimant stayed home to care for the children due to the pandemic. Specifically, claimant's children were unable to attend school and claimant's husband was unavailable to care for them. Claimant hopes to be available for work again beginning November 2, 2020, although it is unclear if she will be. Claimant is not eligible for benefits during the period she is unavailable for work.

**While this decision denies regular, state benefits, the evidence indicates claimant may be eligible for federal Pandemic Unemployment Assistance (PUA). Further information on PUA, including how to apply, is set forth below.**

**DECISION:**

The decision dated August 31, 2020 (reference 01) that denied benefits based on a finding claimant voluntarily quit work on March 5, 2020 for personal reasons is MODIFIED in favor of appellant. Claimant's separation from employment was not disqualifying. However, she is not available for work and therefore ineligible for benefits from the benefit week ending April 18, 2020 and continuing to date.

**Note to Claimant:**

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



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November 3, 2020  
Decision Dated and Mailed

abd/scn