

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

KATINA MCKENZIE
Claimant

APPEAL 22A-UI-10520-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TARGET CORPORATION
Employer

**OC: 12/26/21
Claimant: Appellant (2R)**

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

STATEMENT OF THE CASE:

The claimant, Katina McKenzie, filed an appeal from the April 19, 2022, (reference 08) unemployment insurance decision that denied benefits based upon the conclusion she voluntarily quit. The parties were properly notified of the hearing. A telephone hearing was held on June 29, 2022. The claimant participated and testified. The employer did not participate. Exhibits A, B, and C were received into the record.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

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

The claimant worked for the employer as a full-time picker from September 14, 2021, until her employment ended on April 13, 2022, when she was terminated. The claimant reported directly to Operations Manager Jacob Bartlett.

The employer has an employee handbook. It does not have a policy stating an associate will be considered to have voluntarily abandoned their job if they do not report to a scheduled shift or inform their manager that they will be gone for three consecutive days.

The claimant's visited her physician on December 17, 2021. The claimant's physician ordered the claimant to quarantine for 10 days from the onset of symptoms. The claimant provided the doctor's note. (Exhibit A) The claimant provided scheduling information showing she was removed from the schedule for the next 14 days.

The claimant returned to work in the middle of March 2022. When the claimant returned, she had short hours. The administrative record KCCO shows the claimant earned \$162.00 for the week ending March 12, 2022.

The claimant last worked on March 17, 2022. The claimant began to experience lingering symptoms of Covid19. The administrative record KCCO shows the claimant earned \$81.00 during the week ending March 19, 2022.

On March 20, 2022, the claimant obtained a doctor's excuse. This excused her from working on March 20, 2022 and March 21, 2022. The claimant provided a copy of this doctor's note. (Exhibit A) The claimant was informed by a human resources representative that she needed to get a leave of absence form certified by her doctor. With that in mind, the claimant provided all of the notes she received from the doctor for her treatment. She had several conversations with representatives in human resources. None of them specified what she should do to certify her leave of absence beyond what she was doing.

In early April 2022, the employer sent an email to the claimant informing her that she had to return to work by April 13, 2022 or she would be terminated. The claimant did not return by that date. The claimant provided a copy of doctor's note indicating she was still experiencing lingering Covid19 symptoms on April 10, 2022. (Exhibit A)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the employer terminated the claimant while she was being treated for lingering Covid19 symptoms.

Iowa Code section 96.5(1)d provides:

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

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.

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 Services v. Jackson and Employment Appeal Board*, 810 N.W.2d 532 (Iowa Ct. App. 2012).

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). A claimant is not disqualified for leaving employment if he or she (1) left employment by reason of illness, injury or pregnancy; (2) on the advice of a licensed and practicing physician; (3) and immediately notified the employer or the employer consented to the absence; (4) and when certified as recovered by a physician, the individual returned to the employer and offered services but the regular or comparable suitable

work was not available. *Area Residential Care, Inc. v. Iowa Department of Job Service*, 323 N.W.2d 257 (Iowa 1982). A “recovery” under Iowa Code Section 96.5-1-d means a complete recovery without restriction. *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862 (Iowa App. 1985).

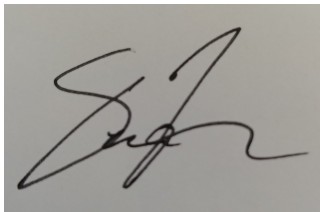
The administrative law judge finds the claimant was terminated while she was being treated for lingering Covid19 symptoms. The claimant testified she was providing the employer’s human resources department up to date information regarding her treatment. The employer has provided no information to the contrary. Benefits are granted, provided the claimant is otherwise eligible.

DECISION:

The April 19, 2022, (reference 08) unemployment insurance decision is REVERSED. The claimant was discharged from employment due to a non-disqualifying act. Benefits are granted, provided she is otherwise eligible.

REMAND:

The administrative law judge is remanding to the Benefits Bureau the issue regarding whether the claimant was able and available for work effective April 13, 2022.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

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

September 15, 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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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 adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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.