

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DONALDA M PARTINGTON
Claimant

APPEAL 21A-UI-02722-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 03/15/20
Claimant: Respondent (1/R)

Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.5-1 - Voluntary Quit
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview
Iowa Code § 96.3-7 – Overpayment
PL 116-136 Section 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Casey's Marketing Company (employer) appealed a representative's December 30, 2020, decision (reference 01) that concluded Donalda Partington (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 9, 2021. The claimant participated personally. The employer participated by Gail O'Connor, General Manager. The administrative law judge took official notice of the administrative file.

ISSUE:

The issues include whether the claimant was separated from employment for any disqualifying reason, whether the claimant was overpaid benefits, which party should be charged for those benefits, and whether the claimant is eligible for Federal Pandemic Unemployment Compensation.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 8, 2008, as a part-time donut maker. The claimant requested and the employer granted the claimant a leave of absence starting on March 18, 2020. The claimant's physician wrote a note excusing her from work because she had medical risk factors during the Covid-19 pandemic.

On August 26, 2020, the employer sent the claimant a letter asking her to provide information from herself and her healthcare provider regarding workplace precautions and accommodations. The claimant responded by saying she would not be returning until she had a vaccine because she did not feel safe. She did not provide any documentation from her physician. The claimant did not respond to the employer's request for information about precautions or accommodations.

On September 14, 2020, the employer sent the claimant a letter indicating the leave of absence could not be extended based on the claimant's information. The claimant was welcome to reapply for employment when she was able to return to work. The claimant has received her first injection and will receive her second Covid-19 vaccination injection soon. She will be able to work when her doctor releases her.

The claimant filed for unemployment insurance benefits with an effective date of March 15, 2020. Her weekly benefit amount was determined to be \$191.00. The employer provided a written response to the scheduled December 29, 2020 fact-finding interview. The written response was provided by the employer's representative Dara Hallman at Employers Edge.

The claimant received benefits from March 22, 2020, to the week ending September 26, 2020. This is a total of \$4,966.00 in state unemployment insurance benefits after March 15, 2020. She received \$4,393.00 in Pandemic Emergency Unemployment Compensation. She also received \$12,900.00 in Federal Pandemic Unemployment Compensation as of the week ending February 27, 2021. The claimant received \$1,500.00 in Lost Wage Assistance.

REASONING AND CONCLUSIONS OF LAW:

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(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 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.

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 claimant left work under the advice of her physician. The employer consented to her leaving. While absent, the employer separated the claimant from employment. 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).

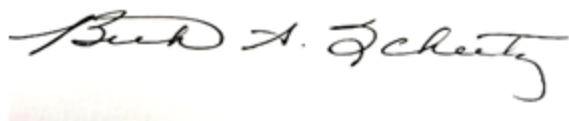
Although the employer regards this separation as a voluntary quit, Iowa law requires that there be an intent on the part of the claimant to quit and an overt act that shows that intent. The claimant here did not quit her job. The employer separated her from employment. This is not a voluntary quit. Rather it is a non-disqualifying discharge. Benefits are allowed, provided the claimant is otherwise eligible.

The issue of whether claimant was able and available for work is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The representative's December 30, 2020, decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.

The issue of whether claimant was able and available for work is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

A handwritten signature in black ink, reading "Beth A. Scheetz". The signature is written in a cursive style with a large, stylized 'B' and 'S'.

Beth A. Scheetz
Administrative Law Judge

March 11, 2021
Decision Dated and Mailed

bas/lj