

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AYLA JANNECK
Claimant

BETHANY MANOR INC
Employer

APPEAL 21A-UI-11142-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/21/21
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Ayla Janneck, the claimant/appellant, filed an appeal from the April 20, 2021, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on May 27, 2021. Ms. Janneck participated and testified. The employer participated through Nathan Winkel, human resources coordinator. Claimant's Exhibits A-F and Employer's Exhibit 1 were admitted into evidence.

ISSUE:

Was Ms. Janneck discharged for disqualifying job-related misconduct?
Is Ms. Janneck able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Janneck began working for the employer on July 14, 2016. She worked as a full-time homemaker until 2018. In 2018, Ms. Janneck began working as a part-time certified nursing assistant (CNA). The last shift Ms. Janneck worked was on March 14, 2020. Ms. Janneck was separated from employment on August 24, 2020.

In October 2019, Ms. Janneck and her doctor completed Family Medical Leave Act (FMLA) paperwork for her to take intermittent leave for allergies, breathing issues and a potential autoimmune disease. The FMLA leave was effective for one year. Ms. Janneck called in and used FMLA leave in late 2019 and early 2020.

In March 2020, the United States declared a public health emergency because of the COVID-19 pandemic. Ms. Janneck was concerned about her health and the pandemic. Ms. Janneck called in and took FMLA leave on March 15. She took vacation leave March 16 through March 23. Ms. Janneck then provided a doctor's note, dated March 27, that excused her from work. The doctor's note had no end date. Ms. Janneck gave the note to the employer. The employer removed Ms. Janneck from the schedule.

At some point, the employer asked Ms. Janneck to provide a second doctor's note. Ms. Janneck provided a note, dated May 8 that again excused her from work but did not include an end date. Ms. Janneck gave the note to the employer. The employer continued to not schedule Ms. Janneck for work.

On May 18, Ms. Janneck and the employer discussed her employment via phone. The employer asked Ms. Janneck to come to work since she was still considered a part-time employee and had not worked since March 14. Ms. Janneck said she could not attend work because of her asthma. Ms. Janneck asked if she could be placed in PRN status. The employer agreed and asked Ms. Janneck to send a text message asking to be placed on PRN status. Ms. Janneck sent the text message that afternoon and the employer place her in PRN status.

The employer's policy provides that employees in PRN status must work at least 56 hours per quarter, including two weekend shifts per month or the employee will be considered "self-terminated." Ms. Janneck acknowledged receiving the policy on, or about, her hire date. Ms. Janneck did not work any hours on, or after, May 18.

A few days before August 24, the employer called Ms. Janneck and told her that she had to work some hours to stay employed. Ms. Janneck said that she thought she was covered by her FMLA leave. The employer told Ms. Janneck that they did not think that FMLA covered her leave but would check into it and get back to her. On August 24, the employer called Ms. Janneck and told her that the employer was ending her PRN status because she did not work the required weekend shifts to remain on PRN status. Ms. Janneck said that she was covered by FMLA. The employer told her that to use her FMLA leave she would have had to pick up a shift and then call-in to use FMLA leave and since she had not done that since May 18, the employer was ending her PRN status.

As of the hearing date, Ms. Janneck remains under doctor's orders to not attend work in-person. Ms. Janneck is able to work remotely and is looking for remote work such a secretarial work or telemarketing work. Ms. Janneck has several years of experience in the healthcare field and high school level schooling.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Janneck is able to and available for work, however, she was discharged from employment due to job-related misconduct.

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).

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".

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) *Able to work.* An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. *Illness, injury or pregnancy.* Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) *Available for work.* The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. A person claiming benefits has the burden of proof that she is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

In this case, Ms. Janneck is able to available for work. Although Ms. Janneck cannot work as a CNA or homemaker in person she has the education and skills to work remotely in gainful employment. Remote or tele-work is engaged in by many as a means of livelihood.

However, Ms. Janneck was discharged from employment due to job-related misconduct. The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented credible evidence that Ms. Janneck did not pick any shifts while on PRN status despite acknowledging the policy requiring that she must work said hours. Ms.

Janneck is the one that suggested she be placed in PRN status. It is not plausible that Ms. Janneck did not know that she would have to work at least some hours while in PRN status. Ms. Janneck not picking up shifts while in PRN status even though she was required to do so is disqualifying misconduct. Since Ms. Janneck was discharged for misconduct, benefits are denied.

DECISION:

The April 20, 2021, (reference 01) unemployment insurance decision is affirmed. Ms. Janneck discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Daniel Zeno
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June 9, 2021
Decision Dated and Mailed

dz/kmj