

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

BAKAR H AHMED
Claimant

APPEAL NO: 19A-UI-03106-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 03/24/19
Claimant: Appellant (2)

Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 15, 2019, reference 01, decision that denied benefits. After due notice was issued, a telephone hearing was held before Administrative Law Judge Julie Elder on May 3, 2019. The claimant participated in the hearing. Mary Eggenburg, Benefits Specialist and Amanda Petersen, Human Resources Manager, participated in the hearing on behalf of the employer. Employer's Exhibits One through Three were admitted into evidence.

ISSUE:

The issue is whether the employer discharged the claimant for work-connected misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time clinical technician II for The University of Iowa from August 13, 2007 to March 16, 2019. The employer determined he voluntarily quit his employment by failing to contact it or report for work for three consecutive workdays in violation of the employer's policy.

The claimant was on an approved vacation from February 26 through March 12, 2019. He needed the time off to go to the Sudan to deal with his father's estate. He was scheduled to be back at work March 13, 2019, but did not show up for work or contact the employer March 13, March 14 or March 15, 2019. He returned to Iowa City March 26, 2019, after his court date in the Sudan, and went to Human Resources where he was notified the employer considered him to have voluntarily quit by abandoning his job (Employer's Exhibits One and Two).

The Sudan is in the middle of a revolution and phone and internet service is extremely limited outside the capitol city of Khartoum and only works there from 6:00 p.m. to 9:00 p.m. as those services are controlled by the government. The employer left the claimant voice mail March 15 and March 18, 2019, and also sent him emails on those dates stating he needed to contact the employer immediately or it would be considered job abandonment but the claimant did not receive those messages due to the fact his phone was not working in the Sudan. He also was

unable to text, email or call the employer while in the Sudan. He only had the phone number of his supervisor who left the department after the claimant went on vacation. The number to the office phone was in his cell phone and he was unable to access it while in the Sudan.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665 (Iowa 2000).

The claimant's late call to the employer was justified because the claimant, who was suffering an asthma attack, was physically unable to call the employer until his condition sufficiently improved. *Gimbel v. EAB*, 489 N.W.2d 36 (Iowa App. 1992). Unreported absences do not constitute job misconduct if the failure to report is caused by mental incapacity. *Roberts v. IDJS*, 356 N.W.2d 218 (Iowa 1984).

The above cited cases present a situation similar to that of this case in which the claimant was unable to contact the employer to report his absences because he was in a war-torn country with very limited phone and internet services. Additionally, he only possessed the phone number of his supervisor who left the department while the claimant was in the Sudan and the office phone number was in his phone which he could not access due to the lack of service.

The claimant did not intend to quit his job. He was prevented from calling, emailing, or texting the employer due to issues that were beyond his control. Consequently, his separation was due to a termination. The employer has not met its burden of proving the claimant's actions rise to the level of disqualifying job misconduct as that term is defined by Iowa law. Therefore, benefits must be allowed.

DECISION:

The April 15, 2019, reference 01, decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn