

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHAWNA R GRONEBERG
Claimant

NPC INTERNATIONAL INC
Employer

Case No. 21IWDUI2088

IWD Appeal No. 21A-UI-07629

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 4, 2021 (reference 06) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on May 3, 2021. The claimant, Shawna Groneberg, participated personally. The employer, NPC International, Inc., did not participate. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents. The appellant's exhibits were also admitted.

ISSUES:

Did claimant voluntarily quit the employment with good cause attributable to employer?
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:

Claimant was hired in the summer of 2020 to work as a cook at a Pizza Hut location. The location already had one cook. With the COVID-19 pandemic affecting the location's business, claimant's hours soon fell from the thirty hours per week she was promised to a less satisfying eight hours per week. Claimant was essentially relegated to doing prep work for the minimal orders the location was receiving.

The pandemic also mandated that claimant wear a mask at work. She has a medical condition she called a "sweating thing" that caused her face to breakout from wearing the mask. She sought treatment. A physician prescribed her a topical cream, which burned her face. As a result, she could not wear a mask for several days. Because of that, she could not work for several days. She got a note from her doctor excusing her from work through October 19, 2020. In a text message exchange with her supervisor on October 15, claimant wrote:

Claimant: If I don't lose my job, I would like to take the rest of the week off, my face is pretty so[re]¹ still. I can get the Dr to extend the note i[f] I needed to. I'll stop in to show you my face n bring the not[e.] I really am sorry this happened
Claimant: I promise to not be sick or unreliable after this breakout is over. I'm hoping I won't lose my job.
Supervisor: You are off the schedule
Claimant: So im fired
Claimant: I have a dr. note, for all week, I thought that's what I needed to not be fired. If u want to see my face I will gladly show you
Claimant: U wouldn't want me [message cut off]

Claimant's supervisor never responded and never spoke to claimant again. Claimant assumed she had been discharged.

Claimant's application for unemployment benefits was denied. She filed an appeal.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits:

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.

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.

Iowa Administrative Code rule 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

¹ Parts of the exchange are clipped. The text in brackets represents the undersigned's best attempts to reconstruct the conversation.

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).

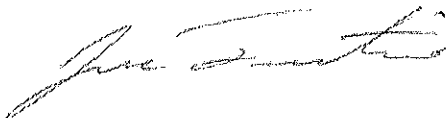
First it must be determined whether claimant quit or was discharged from employment. A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992).

In this case claimant had no intention to quit. Her text messages include statements to that effect. She was taken off the schedule, which was consistent with her needs that week, but her supervisor never put her back on the schedule, never again communicated with her, and never contradicted claimant's claim in text that she was being fired. Claimant was discharged.

The next question is whether claimant was discharged for disqualifying misconduct. Here the undersigned concludes she was not. It appears to the undersigned that the claimant was discharged because of a few days of excused absences. That does not amount to misconduct. If that was not the reason behind the termination, the other possible explanation seems to be that this employer had no hours for claimant, which, likewise, is not her misconduct. Benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The March 4, 2021 (reference 06) unemployment insurance decision is reversed. Benefits will be allowed, provided claimant is otherwise eligible.



Joseph Ferrentino
Administrative Law Judge
Department of Inspections and Appeals

Administrative Hearings Division

May 6, 2021
Decision Dated and Mailed

JF/lb