

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

KEITH BLANCHARD

Claimant

and

OKOBOJI BARZ INC

Employer

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HEARING NUMBER: 21B-UI-13494

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2 96.5-1

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Claimant, Keith Blanchard, worked for Okoboji Barz from June 13, 2019 through April 2, 2021 as a full-time head chef. On April 1, 2021, the Claimant contacted the Employer via Jordain Croker (Training and Culture Specialist) to report that he was sick and feverish. The Claimant went over the menu with her as he lay in bed. Afterwards, he sent a text message about his absence and returned to sleep. Jordain contacted him around noon to ask if he was on his way to work. Upset, because he had already spoken to her about being sick, the Claimant retorted, "I'm not coming in today...if that's what you want, I'll give you my key!" The Employer continued to ask if he was coming in to which the Claimant simply hung up. Allison Bessette (Claimant's fiance) was with the Claimant and overheard this conversation. The Claimant never turned in his keys.

On April 2, 2021 (Friday), the Claimant texted Jordain reporting that he was still sick to which his message was passed to her supervisor, Milissa Reynolds (Food and Beverage Manager). Milissa responded via text to the Claimant that she was under the impression he quit, and that he would need to speak with Butch Parks (Owner) to discuss his future employment there, as well as would need his key. The Claimant responded that he felt he was being harassed while sick which upset him, but that he would contact Butch. He then sent an e-mail to Butch that same day requesting a meeting to which the owner never responded. The Claimant informed Milissa he had not heard from Butch.

The following Monday, April 5, 2021, Ms. Reynolds sent the Claimant another text requesting the return of his keys and informing him that he would need an escort as according to protocol, anyone who's been fired needs to be escorted onto the property to retrieve their belongings. The Claimant did not know why he was being terminated.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.25 provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5...

The findings of fact show how we have resolved the disputed factual issues in this case. We have carefully weighed the credibility of the witnesses and the reliability of the evidence. We attribute more weight to the Claimant's version of events. The record establishes the Claimant contacted the Employer about being sick on April 1st, 2021. Although he later told Jordain she could have his key, he didn't act on it. His response was merely reactionary to what he perceived was harassment at being repeatedly questioned after he already properly reported his illness. The Claimant provided a witness whom we find credible to corroborate his condition. The fact that he contacted the Employer, again, on April 2nd to report his continued illness, corroborates the Claimant's belief he was still an employee, and had not quit in spite of what he stated the previous day in anger.

"[Q]uitting requires an intention to terminate employment accompanied by an overt act carrying out the intent." *FDL Foods, Inc. v. Employment Appeal Board*, 460 N.W.2d 885, 887 (Iowa App. 1990), *accord Peck v. Employment Appeal Board*, 492 N.W.2d 438 (Iowa App. 1992). If the Claimant intended to sever his employment relationship, he had no reason to report an absence after a purported quit. In addition, he would have made arrangements to pick up his belongings and return the Employer's key. None of these acts or discussions about the same occurred that day. Thus, the record lacks evidence to support the Claimant intended, much less provided any overt act to discontinue his employment on April 1, 2021.

The Claimant's belief that he was terminated is not wholly unreasonable. He complied with the Milissa's directive to contact the Owner, but his emails went unanswered. The fact he was required to turn in his keys before any further discussion and told he needed an escort onto the property further sealed his belief he was terminated, and no longer an employee.

When reviewing this record as a whole, it is understandable how a miscommunication between the parties, initially, may have occurred. However, once the Claimant called April 2nd, any miscommunication should have been clarified. The Claimant did not quit. The fact his emails were unanswered is indicative the Employer intended to sever the employment relationship. Such a termination is considered a discharge for which misconduct must be established.

871 IAC 24.32(4) provides:

Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In the cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Based on this record, we conclude the Claimant properly reported his last two absences. The court in *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982) held that absences due to illness, which are properly reported, are excused and not misconduct. There is nothing in this record to support the Employer satisfied their burden of proof.

DECISION:

The administrative law judge's decision dated August 9, 2021 is **REVERSED**. The Employment Appeal Board concludes that the Claimant did not voluntarily quit, rather he was discharged for no disqualifying reason. Accordingly, he is allowed benefits provided he is otherwise eligible.

James M. Strohman

Ashley R. Koopmans

Myron R. Linn