

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MOLLI R PAGANO
Claimant

CEREBRAL INFOTECH LLC
Employer

APPEAL 21A-UI-14502-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/28/21
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

On June 24, 2021, the claimant, Molli R. Pagano, filed an appeal from the June 22, 2021, (reference 02) unemployment insurance decision that denied benefits based on the determination that claimant voluntarily resigned employment with the employer, Cerebral Infotech, LLC, by failing to report to work or call in for three consecutive days. The parties were properly notified about the hearing. A telephone hearing was held on August 20, 2021. Claimant participated personally. The employer participated through Kimberly Peterson. Claimant's Exhibit A was admitted to the hearing record.

ISSUE:

Did the claimant voluntarily quit employment without good cause attributable to the employer, or 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: The claimant was employed part-time as a medical screener beginning on December 11, 2020, and was separated from employment on March 30, 2021, when she was discharged.

Claimant last worked at the jobsite where she was assigned on March 23, 2021. Around that time, her son had contact with someone with COVID-19. Additionally, claimant was not feeling well. She called her site supervisor and the site occupational health department as she had been told to do at orientation for the jobsite. She told them she would need to be absent because of her son's exposure and her own illness. She was scheduled to work each day that week, and called out sick each day. She was never told when or if she could return to work.

On March 30, 2021, Peterson reached out to claimant because she had not submitted information for payroll. Claimant responded that she did not have any hours worked that week and did not know if she could return to work because she had not been instructed to do so. Claimant received no additional instruction from Peterson. Though the recruiter from the employer reported that she attempted to get in touch with claimant, claimant received no

messages or missed calls after the email exchange. She assumed, after she could not access the payroll application she used for reporting payroll information that she had been separated from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

Iowa Code § 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 § 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 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).

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); see also Iowa Admin. Code r. 871-24.25(35). 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 (Iowa Ct. App. 1992).

Claimant testified that she called out sick each day she was absent from the site employer, as she had been instructed to do. Though she did not return, it was apparently because she was not explicitly told by anyone, whether at the employer or jobsite, that she was authorized to do so. Claimant would not have continued to maintain contact with the jobsite had she intended to resign her employment. The separation is a discharge.

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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Id.*

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation.

The testimony indicates that there was what amounted to a breakdown in communication between the employer and the claimant. Claimant had not retained contact with the recruiter at the employer, and did not know she needed to under circumstances such as those at the end of her employment. Claimant apparently did not report for work, but it was because of this communication breakdown, not because she intentionally refused to report for work. While this may have amounted to poor judgment on claimant's part, or while it might have served her to be more assertive in order to find out what she should have been doing, it does not amount to disqualifying, job-related misconduct. The separation is not disqualifying.

DECISION:

The June 22, 2021, (reference 02) decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.



Alexis D. Rowe
Administrative Law Judge

August 24, 2021
Decision Dated and Mailed

ar/kmj