

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BARBARA A RICHARDSON
Claimant

CLINIC INVESTMENTS INC
Employer

APPEAL 21A-UI-11858-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/21/21
Claimant: Appellant (4R)

Iowa Code § 96.5(2)A – Discharge from Employment
Iowa Code § 96.5(1) – Voluntary Quit from Employment

STATEMENT OF THE CASE:

On May 3, 2021, the claimant, Barbara A. Richardson, filed an appeal from the April 23, 2021 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant voluntarily quit her employment for personal reasons. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on June 29, 2021. The claimant, Barbara Richardson, participated. The employer, Clinic Investments, Inc., participated through Annette Hughlette, Human Resource Specialist. Claimant's Exhibits A and B were received and admitted into the record without objection.

ISSUES:

Did the claimant quit the employment without good cause attributable to the employer or was she discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits?

Was the claimant able to and available for work?

Was the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed most recently in a part-time position as a Tech 3, from December 28, 1998 until November 10, 2020, when she was discharged for failing to return from a leave of absence.

Claimant last reported to work and performed her job on March 20, 2020. After that date, claimant requested a leave of absence in order to quarantine, due to the rapidly spreading COVID-19 pandemic. The employer granted claimant's request and did not schedule her.

The employer experienced a staff furlough from April 6 through May 11, 2020. On May 11, 2020, the employer reached out to claimant and recalled her to work. Claimant told the employer she would not return due to both personal health concerns and health concerns for her husband. At that point, she supplied the employer with medical documentation and statements indicating her doctor advised her to quarantine. (Claimant's Exhibit B)

On November 10, 2020, the employer contacted claimant and discharged her for failing to return after a six-month leave of absence.

The employer has a policy of granting leaves of absence for up to six months. However, it typically will not extend a leave of absence beyond six months in length. The employer had work available for claimant throughout her leave of absence, but claimant chose to stay home due to concerns about being exposed to COVID-19.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason, but she was not available for work at that time. Benefits are withheld until January 3, 2021, at which point claimant became available for work and benefits are allowed.

The first issue is whether claimant quit her employment or whether the employer discharged her from employment.

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 unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left the employment. *Irving v. Empl. App. Bd.*, 15-0104, 2016 WL 3125854, (Iowa June 3, 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It 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 there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Here the evidence in the record establishes that the employer severed the employment relationship and discharged claimant. Claimant never expressed any intention of quitting, and neither party presented any testimony or documentation indicating claimant quit. Therefore, this case will be analyzed as a discharge from employment.

The next issue is whether claimant's discharge from employment was for disqualifying, job-related misconduct.

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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all, provided the discharge is not contrary to public policy. However, if the employer fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

In this case, the employer discharged claimant for failing to return from a leave of absence after six months. The employer followed its own policies in making the decision to discharge claimant. While the employer is entitled to make these sorts of business decisions, it has not established that claimant was discharged for any disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

The final issue to be determined is whether claimant is able to and available for work effective November 8, 2020.

Iowa Code § 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(2) 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.

(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.

Iowa Admin. Code r. 871-24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

In this case, claimant was quarantining per the instructions of her medical provider. She had removed herself from the workforce in order to protect both herself and her husband from COVID-19, as they both have pre-existing conditions. While this may have been a good personal decision, unemployment insurance benefits are not payable to individuals who are not available for work. Therefore, the administrative law judge finds that claimant was unavailable

for work – and consequently ineligible for benefits – from November 8, 2020, through January 2, 2021. Effective January 3, 2021, claimant ceased her self-quarantine and was once again available for work. Benefits are allowed from that point forward, provided she is otherwise eligible.

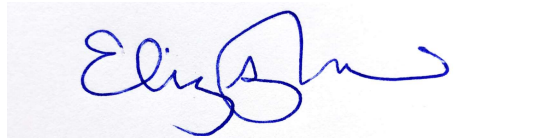
DECISION:

The April 23, 2021 (reference 01) unemployment insurance decision is modified in favor of claimant/appellant. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

However, claimant was unavailable for work from the date of separation through the week ending January 2, 2021. Therefore, benefits should be withheld from November 8, 2020, through January 2, 2021.

REMAND:

The issue of whether claimant was on an approved leave of absence from March 22, 2020, through November 10, 2020, during her March 22, 2020 claim year, is remanded to the Benefits Bureau for review and determination.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

July 12, 2021
Decision Dated and Mailed

lj/kmj