

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KRISTINE K HUTT
Claimant

B R STORES INC
Employer

APPEAL 21A-UI-20641-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/11/21
Claimant: Appellant (2R)

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

STATEMENT OF THE CASE:

Kristine K Hutt, the claimant/appellant filed an appeal from the September 9, 2021 (reference 01) unemployment insurance decision that denied benefits based on a voluntary quit on March 9, 2021. The parties were properly notified about the hearing. A telephone hearing was held on November 8, 2021. Ms. Hutt participated and testified. Bruce H Stotlze Jr, attorney, represented Ms. Hutt. The employer participated through Jon Thober, human resources director. Employer's Exhibit 1 was admitted as evidence.

ISSUE:

Did Ms. Hutt voluntarily quit without good cause attributable to the employer, or did the employer discharge her for disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Hutt began working for the employer on February 23, 2020. She worked as a part-time pharmacy tech. Her last day worked was March 9, 2021.

Ms. Hutt's elbow was injured outside of work. Ms. Hutt's medical provider and physical therapist restricted the activities she could do, including, but not limited to, no lifting over 20 pounds. Ms. Hutt offered her doctor's note to the store director. The store director told Ms. Hutt that the employer did not need the note. Ms. Hutt talked with her manager, and offered her doctor's note to her manager. The manager told Ms. Hutt that they would follow the store director's lead. The manager did not take Ms. Hutt's doctor's note. Ms. Hutt told her manager that, based on her doctor's note, she would take time off of work to do physical therapy. The manager told Ms. Hutt that that was okay and to keep the manager updated. Ms. Hutt kept her manager updated via text and phone. Ms. Hutt and her manager did not discuss a return date. The employer's human resources staff sent Ms. Hutt Family Medical Leave Act (FMLA) paperwork with instructions to return the paperwork to the human resources staff.

At the time Ms. Hutt stopped work she did not have any paid-time-off (PTO) available to use. The employer's policy provides, in pertinent part, that employees who work zero hours for more than two consecutive payroll periods are considered to no longer be continuously employed, unless the employee is on an approved PTO, or Family Medical Leave Act (FMLA) leave. Ms. Hutt acknowledged receiving a copy of the policy on her hire date.

In early June 2021, Ms. Hutt submitted her completed FMLA paperwork to her manager. Since Ms. Hutt had not worked since March 9, 2021, the employer marked Ms. Hutt as quitting due to inactivity. The employer processed the quit as of June 23, 2021. On June 25, 2021, Ms. Hutt's doctor released her to return to work. Ms. Hutt contacted her manager to ask if she could come back to work. The manager told Ms. Hutt that her employment had ended.

The issue of Ms. Hutt's ability to work from March 10, 2021 through the end of her employment has not been

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Hutt did not quit. The employer ended her employment for no disqualifying reason.

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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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).

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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment 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, 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, Ms. Hutt did not quit. She talked with her manager about taking time off due to her out-of-work injury, she stayed in touch with her manager during her time, and when her doctor released her to return to work she asked to return to work. The employer ended Ms. Hutt's employment because she was not working from March through June 2021. The employer has not established disqualifying, job-related misconduct on the part of Ms. Hutt. Benefits are allowed.

DECISION:

The September 9, 2021 (reference 01) unemployment insurance decision is reversed. Ms. Hutt was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

REMAND:

The issue of Ms. Hutt's ability to work from March 10, 2021 through the end of her employment is remanded (sent back) to the Benefits Bureau of Iowa Workforce Development for investigation and a decision.



Daniel Zeno
Administrative Law Judge
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Unemployment Insurance Appeals Bureau
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December 8, 2021

Decision Dated and Mailed

dz/abd