

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**MELISSA D ROBINETTE**  
Claimant

**HAWKEYE DENTAL PROSTHETIC STUDIO**  
Employer

**APPEAL 22A-UI-17598-LJ-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 07/24/22**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

On September 30, 2022, claimant Melissa D. Robinette filed an appeal from the September 26, 2022 (reference 01) unemployment insurance decision that denied benefits based on a determination that claimant voluntarily quit her employment on July 24, 2022, for personal reasons. The parties were properly notified of the hearing. A telephonic hearing was held at 2:00 p.m. on Tuesday, October 25, 2022. The claimant, Melissa D. Robinette, participated. The employer, Hawkeye Dental Prosthetic Studio, did not appear for the hearing and did not participate. No exhibits were offered or admitted into the record.

**ISSUE:**

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?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for Hawkeye Dental Prosthetic Studio on January 15, 2019. She worked full-time hours for the employer as a dental technician. Claimant's employment ended on July 24, 2022, when owner Chris Hageman discharged her from employment. Hageman gave her the false "option" to resign or be discharged, and claimant told Hageman she refused to resign so he discharged her.

Claimant reported to work on Friday, July 22 as scheduled. The employer's office closes at 1:00 p.m. on Fridays, but at that point in the week claimant had only worked 32 hours of her required 35 hours. Therefore, as things were wrapping up at the office, claimant told her manager she would be coming in either Friday night or at some point over the weekend to work her remaining hours for the week, after the office was closed. Claimant's manager indicated that would be fine.

Around 8:00 p.m. on Saturday, July 23, claimant and her husband were talking about how she still needed to put in three more hours of work for the week. They had a volunteer project planned for the following day, so claimant would not be able to work at all that day. Therefore, claimant decided to go into work that evening and put in her hours. Claimant did not contact anyone to ask whether she could go in at that time, due to the late hour in the day and the fact that her manager was at his lake house for the weekend. Claimant had worked hours after the office was closed in the past, and it had never been a problem for the employer. However, in the past, claimant had always contacted either Hageman or her manager right before she went into work to ask permission to go into work and they had approved it.

Claimant had not received any prior warnings for going into work after hours or for taking action without manager or owner approval. She was not aware her job was in any jeopardy. When Hageman contacted her on July 24, he told her that he was discharging her because he could no longer trust her.

### **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. Benefits are allowed, provided claimant is otherwise eligible.

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 Admin. Code r. 871-24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

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. Empl. Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Empl. Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). Here, there is no evidence that claimant accepted to Hageman's "offer" to let her resign. Even if she had, this would not be a true resignation because claimant did not exercise a voluntary choice in the matter—she would have been separated from employment regardless of her actions during that conversation. Therefore, this case is properly analyzed as a discharge from employment and the burden of proof rests with the employer.

Iowa Code section 96.5(2)(a) and (d) provide:

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 disqualification shall continue 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.

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d. For the purposes of this subsection, "*misconduct*" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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 even 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. Misconduct by an individual includes but is not limited to all of the following:

Misconduct by an individual includes but is not limited to all of the following:

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

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(14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dept of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

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. 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 Dept 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 Dept 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." *Newman v. Iowa Dept of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee.

In this case, claimant worked three hours for her employer on a Saturday night without receiving express permission from either the company owner or from her manager. She had informed her manager prior to working that weekend that she would be coming into the building to work over the weekend, and he indicated it was acceptable. Claimant had never been warned for this conduct, and there is no indication she was aware that coming in the evening of July 23 would put her job in imminent jeopardy. The employer did not participate in the hearing or submit any documentation in lieu of testimony to fulfill its burden of establishing disqualifying misconduct, and nothing claimant described during her testimony evinces any conduct in disregard of the employer's interests. As the employer has not met its burden of proof, benefits must be allowed.

**DECISION:**

The September 26, 2022 (reference 01) unemployment insurance decision is reversed. Claimant did not quit but 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.



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Elizabeth A. Johnson  
Administrative Law Judge

October 31, 2022  
Decision Dated and Mailed

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**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.