

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DIANE M BENDER

Claimant

APPEAL 21R-UI-12144-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 04/12/20

Claimant: Appellant (4R)

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

Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Diane M Bender, the claimant/appellant filed an appeal from the November 3, 2020, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was scheduled on January 11, 2021 at 11:00 a.m. Ms. Bender did not provide a telephone number to the Appeals Bureau prior to the scheduled hearing. The employer did not register for the hearing and did not participate. No hearing was held and Ms. Bender's appeal was dismissed.

At about 11:44 a.m., Ms. Bender contacted the Appeals Bureau for the scheduled hearing. The representative informed Ms. Bender that the record was closed and her appeal was dismissed. Ms. Bender appealed to the Employment Appeal Board (EAB). The EAB concluded that Ms. Bender's 11:44 a.m. call to the Appeals Bureau for her 11:00 a.m. hearing was within a reasonable timeframe and remanded (sent back) the case to the Appeals Bureau of Iowa Workforce Development for a new hearing.

A new hearing was scheduled and Ms. Bender was properly notified of the hearing. A telephone hearing was held on July 23, 2021, at 8:00 a.m. Ms. Bender participated and testified. The employer did not register for the hearing and did not participate. Official notice was taken of the administrative record. Claimant's Exhibit A was admitted into evidence.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Bender began working for the employer in July 2018. She began as a part-time cook and in early 2019 began working as a full-time cook. She was paid \$10.35 per hour. Her job ended on May 5, 2020.

In March 2020, the United States declared a public health emergency because of the COVID-19 pandemic. Due to the pandemic, on April 12, 2020, the employer reduced the number of hours the store would be opened and reduced Ms. Bender's hours from about 37 hours per week to about 28 hours per week. Ms. Bender worked the reduced hours.

Ms. Bender filed her initial claim, effective May 12, 2020, based on the reduced hours. Iowa Workforce Development has not issued a decision about Ms. Bender's eligibility for benefits based on the reduced hours.

On May 5, 2020, Ms. Bender attended work. As soon as she arrived at work, and before she had clocked in, Ms. Bender's manager told her that she was required to wear a face mask. The manager also told all other employees the same thing. Ms. Bender told her manager that she could not wear a mask because she has low blood pressure, a low heart rate and a low body temperature. The manager told Ms. Bender to clock in and that they would discuss the issue more later. Ms. Bender clocked in. Ms. Bender saw that other employees had masks on the tops of their heads or under their chins but not covering their noses and/or mouths. Ms. Bender did not wear a face mask at all. About thirty minutes later, the manager told Ms. Bender to leave since she could not wear a face mask and that the employer would call her back. The employer did not call Ms. Bender back.

In June 2021, when Ms. Bender was in the store, the manager asked her about returning to work. Ms. Bender did not return to work because she was under doctor's restrictions due to a shoulder injury in February/March 2021.

Ms. Bender told her manager that she could not wear a face mask because she wore one about a year before when she was helping her sick brother and she almost passed out. Ms. Bender testified that when she went with her brother to his doctor's appointment, she told the doctors about the time she almost passed out and her brother's doctor told her that she had low oxygen to her brain, which caused her to almost pass out. Ms. Bender attributed her almost passing out to her wearing the face mask.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Bender did not quit. She was discharged from 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.

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).

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 cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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. Bender denies engaging in any misconduct. The employer did not participate in the hearing and provided no evidence to establish misconduct on the part of Ms. Bender. The employer has failed to meet its burden. Benefits are allowed.

DECISION:

The November 3, 2020, (reference 01) unemployment insurance decision is modified in favor of the appellant, Ms. Bender. Ms. Bender did not quit; she was discharged from employment for no disqualifying reason on May 5, 2020. Benefits are allowed as of May 5, 2020, provided she is otherwise eligible.

REMAND:

The issue of whether Ms. Bender was partially unemployed from April 12, 2020 through May 5, 2020 is remanded to the Benefits Bureau of Iowa Workforce Development for investigation and a decision.



Daniel Zeno
Administrative Law Judge
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July 30, 2021
Decision Dated and Mailed

dz/scn