

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CELINE KABURA**  
Claimant

**SWIFT PORK COMPANY**  
Employer

**APPEAL 21A-UI-16327-DZ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/04/21**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Celine Kabura, the claimant/appellant filed an appeal from the July 14, 2021 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 15, 2021. Ms. Kabura participated and testified. She was represented by Gregory Taylor, attorney at law. The employer registered for the hearing but did not respond at the telephone number it provided at the time the hearing was scheduled to begin. Claimant's Exhibits 1 and 2 were admitted into evidence.

**ISSUE:**

Did Ms. Kabura voluntarily quit without good cause attributable to the employer, or was she discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Kabura began working for the employer on December 9, 2019. She worked as a full-time general laborer. She was separated from employment on March 30, 2021.

From March 1, 2021 through March 4, 2021, Ms. Kabura was excused from work by her doctor's note. She returned to work on March 5. On March 19, Ms. Kabura was excused from work by her doctor's note. She returned to work on March 23. The employer asked Ms. Kabura to provide a doctor's note releasing her to return to work. Ms. Kabura scheduled an appointment with her doctor for March 25. That appointment was moved to March 26. Ms. Kabura attempted to call in each day, but the attendance line number was not working.

Ms. Kabura returned to work on March 30. Ms. Kabura's access card did not work. The security guard called the human resources office. The human resources person told the security guard to tell Ms. Kabura that her employment was over because she had not called in. The security guard, at the direction of the human resources person, gave Ms. Kabura the

telephone number to the union. Ms. Kabura called the union and the representative told Ms. Kabura that someone would call her back. No one called her back.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes Ms. Kabura 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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) *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).

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).

In this case, the employer ended the employment relationship on March 30 when Ms. Kabura attempted to return to work. The employer did not participate in the hearing and provided no evidence to establish misconduct on the part of Ms. Kabura. Since employer has failed to meet its burden of proof in establishing disqualifying job-related misconduct, benefits are allowed.

**DECISION:**

The July 14, 2021, (reference 01) unemployment insurance decision is reversed. Ms. Kabura 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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Daniel Zeno  
Administrative Law Judge

September 21, 2021  
Decision Dated and Mailed

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