

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

PRESTON TAYLOR
Claimant

KINSETH HOTEL CORPORATION
Employer

APPEAL 23A-UI-03001-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/12/23
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Preston Taylor, the claimant/appellant,¹ filed an appeal from the Iowa Workforce Development (IWD) March 10, 2023 (reference 03) unemployment insurance (UI) decision. The decision denied Mr. Taylor REGULAR (state) UI benefits because IWD concluded he voluntarily quit on January 8, 2023 for personal reasons. The Iowa Department of Inspections and Appeals UI Appeals Bureau mailed notices of hearing to Mr. Taylor and the employer. The undersigned administrative law judge held a telephone hearing on April 6, 2023. Mr. Taylor participated personally. The employer participated through Kurt Haraldson, general manager and Tom Kuiper, Equifax hearing representative. The undersigned admitted Claimant's Exhibit A as evidence.

ISSUE:

Did Mr. Taylor voluntarily 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: Mr. Taylor began working for the employer, a hotel, on July 28, 2021. He worked as a full-time maintenance engineer.

In late October 2022, Mr. Taylor told Mr. Haraldson that he planned to move out of the Des Moines, Iowa metro area. Mr. Haraldson and Mr. Taylor agreed that Mr. Taylor would continue to work for the employer until the employer hired a new person for the maintenance engineer position. In late November 2022/early December 2022, Mr. Taylor moved from the Des Moines, Iowa metro area to Cedar Rapids, Iowa for another job.

Mr. Taylor continued to work for the employer occasionally but mostly on weekends. The employer would ask Mr. Taylor to work and Mr. Taylor would commute from Cedar Rapids to the Des Moines metro to work when he was available to do so. The employer hired a new maintenance engineer in early December 2022. Mr. Taylor continued to work for the employer to help the new maintenance engineer. Mr. Taylor worked the second and third weekend in

¹ Claimant is the person who filed the UI claim with IWD. Appellant is the person or employer who filed the appeal.

December 2022 and one day during the last week of December. Mr. Taylor also worked the first weekend in January 2023.

On January 8, 2023, Mr. Haraldson asked Mr. Taylor if he could work he following weekend and/or other certain days later in January or in February. Mr. Taylor told Mr. Haraldson that he could not work any of those days. Mr. Haraldson concluded that Mr. Taylor's employment was over because he could not work any of the days the employer wanted him to in later January or February. But Mr. Haraldson did not tell Mr. Taylor that his job was over. Mr. Taylor assumed the employer would contact him when the employer had work available, as the employer had done in the past few months.

On February 7, Mr. Haraldson contacted Mr. Taylor about a work issue. On February 10, another employee contacted Mr. Taylor about a work issue. Mr. Taylor responded to both requests. The employer did not pay Mr. Taylor for this work. Mr. Taylor filed his UI claim because his job in Cedar Rapids ended. IWD already issued a decision denying Mr. Taylor REGULAR (state) UI benefits based on his separation from that job.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes Mr. Taylor did not voluntarily quit. The employer discharged him from employment for a reason that does not disqualify him from receiving UI benefits.

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 Admin. Code r. 871-24.25 provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10.

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 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.

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 such 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 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.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer.² A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention.³ "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.⁴

The employer has the burden of proof in establishing disqualifying job misconduct.⁵ The issue is not whether the employer made a correct decision in separating the claimant from employment, but whether the claimant is entitled to unemployment insurance benefits.⁶ Misconduct must be "substantial" to warrant a denial of job insurance benefits.⁷

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 of the employer's policy or rule 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, Mr. Taylor had no intention of quitting and he took no action to show he wanted to quit. The employer ended Mr. Taylor's employment because he could not work certain days in later January 2023 and/or February 2023. The employer has presented no evidence of misconduct on the part of Mr. Taylor. Since the employer has not established disqualifying, job-related misconduct, benefits should be allowed.

² Iowa Code § 96.6(2).

³ *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

⁴ *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

⁵ *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

⁶ *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

⁷ *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

DECISION:

The March 10, 2023 (reference 03) unemployment insurance decision is REVERSED. The employer discharged Mr. Taylor from employment for a reason that does not disqualify him from receiving UI benefits. Benefits are allowed, as long as no other decision denies Mr. Taylor UI benefits. Any benefits claimed and withheld on this basis shall be paid.



Daniel Zeno
Administrative Law Judge

April 11, 2023
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
4th 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.