

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**NIAHL KAY**  
Claimant

**COUNCIL BLUFFS PAYROLL COMPANY**  
Employer

**APPEAL 21A-UI-24227-ED-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 9/12/21  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 29, 2021 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on January 18, 2022. The claimant, Niah Kay participated personally. The employer, Council Bluffs Payroll Company did not participate. Claimant's exhibits 1-4 were admitted into the record.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?  
Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has been employed by the employer full time since September 1, 2020. Plaintiff's last day worked was August 16, 2021 after which he went out on a medical leave of absence. Claimant had surgery on August 17, 2021. Claimant attempted to return to work multiple times, each time being unable to return while having an additional two surgeries after the first one. Ultimately claimant was released to full duty without restrictions on December 29, 2021 while the employer was on shut down. Claimant attempted to return to work on January 5, 2022, and the employer denied his return saying he had been out too long.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

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 Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 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). What constitutes misconduct justifying termination of an employee and what

misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't 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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

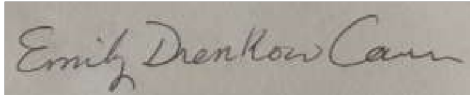
First it must be determined whether claimant quit or was discharged from employment. A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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). Where a claimant walked off the job without permission before the end of his shift saying he wanted a meeting with management the next day, the Iowa Court of Appeals ruled this was not a voluntary quit because the claimant's expressed desire to meet with management was evidence that he wished to maintain the employment relationship. Such cases must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In August 2021 claimant left work in order to have surgery. Claimant was not terminated for misconduct at that time. Claimant clearly did not intend to discontinue his employment as he continually tried to return to work multiple times during the fall 2021. He was however on a leave of absence agreed upon by the employer and the claimant while he was unable to work. This is considered a voluntary period of unemployment and the claimant is ineligible for benefits at that time. On January 5, 2022 claimant, then released to unrestricted duty to return to work, attempted to return to work but was told by the employer he had been gone too long. Claimant returned to work after the leave of absence, and the employer refused to return him to work. The employer effectively terminated his employment at the end of his leave of absence. The employer failed to participate in the hearing and as such has failed to carry the burden of proof that this discharge was for job related disqualifying misconduct.

The administrative law judge concludes that the claimant did not quit but was discharged. Effective January 5, 2022 when he tried to return to work claimant's employment was terminated but not for benefit disqualifying misconduct. The employer failed to participate and thus failed to carry its burden of proof that the discharge was for disqualifying misconduct. Benefits are allowed starting January 5, 2022.

**DECISION:**

The October 29, 2021 (reference 02) unemployment insurance decision reversed. On January 5, 2022 the claimant was discharged from employment but not for job related disqualifying misconduct, and as such is eligible for benefits at that time.

A handwritten signature in cursive script, reading "Emily Drenkow Carr", on a light-colored rectangular background.

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Emily Drenkow Carr  
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March 3, 2022  
Decision Dated and Mailed

ed/kmj