

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASMINE A WILLIAMSON
Claimant

DUBUQUE COUNTY
Employer

APPEAL 22A-UI-05771-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/06/22
Claimant: Appellant (2)**

Iowa Code § 96.6(2) - Timeliness of Appeal
Iowa Code § 96.5(1) - Voluntary Quit
Iowa Code § 96.5(2)a - Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant/appellant, Jasmine Williamson, filed an appeal from the February 23, 2022, (reference 01) unemployment insurance decision that denied benefits based upon her 01/23/22 voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on April 14, 2022. Claimant personally participated and testified. Employer, Dubuque County, participated through Tammy Kiernan, director of nursing. Judicial notice was taken of the administrative record. Employer offered two sets of exhibits. Claimant objected to the exhibits as she had not received them. Employer advised the exhibits were e-mailed to claimant on April 14, 2022. Since the exhibits were not sent to the other party before the hearing date, the objection was sustained, and Employer's exhibits were not admitted. (See Iowa Admin. Code r. 871-26.15(5)).

ISSUE:

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

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the undersigned finds:

Claimant was employed PRN as a certified nurse's aide (CNA) for Sunnycrest, a county owned care facility, starting February 24, 2021. Her last day worked was January 9, 2022. She was separated from employment on January 24, 2022, when he was discharged from work for violating workplace rules for having two no call no shows.

Employer has an employee handbook and a separate attendance policy, both of which were given claimant at the start of her employment. Since claimant is PRN, she does not get vacation or sick time. She does have some PTO that can be used, which requests are required a minimum of two

weeks out. PRN employees are encouraged to find their own replacements, either through someone picking up a shift or employees switching their shifts.

Claimant was scheduled to work first shift on both January 22 and 23, 2022. Claimant timely put in a request to have those shifts off. Claimant was under the mistaken belief that timely submission of the request resulted in automatic approval. This was despite the attendance policy, the conversations with scheduler about working with them to get the shift covered, Ms. Kiernan talking with claimant about getting her shifts covered and a text from employer on January 18, 2022. The text was to the effect of telling claimant she never called employer back to discuss her rescheduling request; that she is still scheduled for first shift for this weekend; and she needs to get in touch to talk about how this is resolved. Claimant never got back in touch. Claimant no called no showed for her shifts on January 22, and 23, 2022. Claimant was discharged from work on January 24, 2022, for two no call no shows.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant's separation from the employment was not a voluntary quit, but a discharge without a 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 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. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

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).

Both parties agreed that claimant did not quit, but that she was discharged for her no call no shows on January 22 and 23, 2022 and for no other reason.

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).

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.

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of

witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events. Claimant's assertion that merely timely submitting a leave request equates to it being automatically approved is incredible. Further, claimant's assertion that it is the employer's responsibility to tell a worker they are still on the shift if a leave is not granted is incredible. However, employer did in fact text claimant they are still scheduled and need to contact the employer.

Iowa Admin. Code r. 871-24.1 provides:

Definitions.

Unless the context otherwise requires, the terms used in these rules shall have the following meaning. All terms which are defined in Iowa Code chapter 96 shall be construed as they are defined in Iowa Code chapter 96.

24.1(113) *Separations*. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

c. *Discharge*. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

Employer has a rule that two no call no shows shall result in termination. Claimant no called no showed for January 22 and 23, 2022. Claimant had the employee handbook, and the attendance policy so knew about the rule. Claimant had a text as recently as January 18, 2022 that told her she was still scheduled for these shifts. While employer may have had good reason to discharge claimant, there was not a disqualifying reason, since to be disqualified for a no call no show, it takes three events, and only two events happened in this instance.

Iowa Admin. Code r. 871-24.25(20) 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. The following reasons for a

voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

With no disqualifying misconduct proven, no disqualification will be imposed. Claimant is entitled to unemployment benefits.

DECISION:

The February 23, 2022, (reference 01) unemployment insurance decision is **REVERSED**. The claimant 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.



Darrin T. Hamilton
Administrative Law Judge

April 19, 2022
Decision Dated and Mailed

dh/kmj