

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JEREMY HODSON**

Claimant

**APPEAL 20A-UI-10963-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 04/05/20**

**Claimant: Appellant (2R)**

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

Iowa Code § 96.5(1) – Voluntary Quitting

Iowa Code § 96.6(2) – Filing – Timely Appeal

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the September 1, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on October 27, 2020, at 10:00 a.m. Claimant participated. Employer did not participate. Claimant's Exhibits A - C were admitted. Official notice was taken of the administrative record.

**ISSUES:**

Whether claimant's separation was a discharge for disqualifying job-related misconduct or a voluntary quit without good cause attributable to employer.

Whether claimant filed a timely appeal.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The Unemployment Insurance Decision was mailed to claimant at the correct address on September 1, 2020. The decision states that it becomes final unless an appeal is postmarked or received by Iowa Workforce Development (IWD) Appeals Section by September 11, 2020. Claimant appealed the decision online on September 8, 2020. The appeal was received by IWD Appeals Section on September 8, 2020.

The administrative law judge further finds: Claimant was employed as a full-time Kitchen Closer from September 2019 until his employment with Casey's ended on April 20, 2020. Claimant requested a two-week leave of absence beginning March 4, 2020. Claimant then requested an additional week of leave. Employer granted claimant's request for leave and directed claimant to arrange coverage for his shifts, which claimant did.

When claimant's leave expired, he was advised by his physician to quarantine due to Covid-19. Claimant tried to contact the store manager to inform her of the physician's advice. Claimant called and visited the store and left messages for the manager, but received no response. On

April 20, 2020, claimant received an email from employer requesting claimant complete an exit survey. (Exhibit A) Claimant did not quit his employment with Casey's.

There has not been initial investigation and decision regarding whether claimant is able to or available for work. The issue should be remanded to the Benefits Bureau of IWD for an initial investigation and decision. A decision on whether claimant is able to and available for work may result in claimant being ineligible for UI; therefore, the issue of whether claimant is eligible for Pandemic Unemployment Assistance should also be remanded.

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that claimant's appeal was timely.

Iowa Code § 96.6(2) provides, in pertinent part: "[u]nless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision."

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(a) If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

(b) If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Claimant's appeal was received by IWD Appeals Bureau prior to the appeal deadline stated on the decision. Claimant's appeal is timely.

The next issue to determine is whether claimant's separation from employment is disqualifying. For the reasons that follow, the administrative law judge concludes claimant did not voluntarily quit his employment; claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code §§ 96.5(1). 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 there is no expressed intention or act to sever the employment relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). In this case, claimant had no intention of

terminating his employment relationship with Casey's. Because claimant did not voluntarily quit his job, claimant's separation from employment must be analyzed as a discharge.

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 disqualification shall continue 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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).

There is no evidence of misconduct by claimant. Employer has not met its burden of proving disqualifying job-related misconduct. Benefits are allowed provided claimant is otherwise eligible.

#### **DECISION:**

Claimant's appeal is timely. The September 1, 2020 (reference 01) unemployment insurance decision is reversed. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

#### **REMAND:**

The issues of whether claimant is able to and available for work and whether claimant is eligible for Pandemic Unemployment Assistance are remanded to the Benefits Bureau of Iowa Workforce Development for initial investigations and decisions.



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Adrienne C. Williamson  
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October 30, 2020  
Decision Dated and Mailed

acw/sam