

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**SYDNEY A EVEN**  
Claimant

**MERCY MEDICAL CENTER-CLINTON INC**  
Employer

**APPEAL 21A-UI-25366-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/17/21  
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quit  
Iowa Code § 96.5A – Refusal of COVID-19 vaccination no disqualification

**STATEMENT OF THE CASE:**

Sydney A Even, the claimant/appellant, filed an appeal from the November 9, 2021, (reference 01) unemployment insurance (UI) decision that denied benefits because of an October 21, 2021 discharge from work. The parties were properly notified of the hearing. A telephone hearing was held on January 28, 2022. Ms. Even participated and testified. The employer participated through Neil Macvickar, hearing representative, and Lexi Hammond, human resources colleague relationship partner. Employer's Exhibits 1-6 were admitted as evidence. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Was Ms. Even discharged for disqualifying, job-related misconduct, or was she discharge for refusing the COVID-19 vaccination?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Even began working for the employer on May 16, 2016. She worked as a full-time registered nurse in the home care group wherein she visited patients at their homes. Her employment ended on October 22, 2021.

The employer issued a COVID-19 vaccination policy on July 8, 2021, which required employees to receive the COVID-19 vaccine or be approved for an exemption by the employer no later than August 20, 2021. The policy provides for a religious exemptions and a medical exemption. The employer required a doctor's signature on the medical exemption request. Ms. Even received a copy of the policy.

Ms. Even was pregnant at the time and decided to get the vaccine after she gave birth. Ms. Even completed the medical exemption form. The form required a doctor's signature. Ms. Even asked her OB/GYN to sign the form. The OB/GYN told Ms. Even that they were signing exemptions forms for their employees only. Ms. Even asked her primary care doctor to sign the

exemption form. That doctor also would not sign the form. Ms. Even asked her manager what she should do since she had completed the form but neither of her doctors would sign the form. Ms. Even's manager told her to submit the form as is. Ms. Even submitted her medical exemption request during the month of July 2021.

On July 27, the employer cancelled Ms. Even's request for a medial exemption because she did not have a doctor's signature on her request. The employer's system sent Ms. Even an email telling her the same. On September 15, Ms. Hammond called Ms. Even to discuss the matter. Ms. Even told Ms. Hammond that she had tried to get her doctor's to sign the medical exemption form but they would not. Ms. Hammond told Ms. Even that she must comply with the policy. On September 29, the employer sent Ms. Even a letter telling her that she had until October 15 to receive the COVID-19 vaccine else her employment would be terminated. On October 22, the employer terminated Ms. Even's employment because she had not received the COVID-19 vaccine, and she had not been approved for an exemption

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

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

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.

Iowa Code section 96.5A, which went into effect on October 29, 2021, provides:

Notwithstanding any other provision of this chapter to the contrary, an individual who is discharged from employment for refusing to receive a vaccination against COVID-19, as defined in section 686D.2, shall not be disqualified for benefits on account of such discharge.

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.

In this case, Ms. Even tried to comply with the employer's policy given her circumstances. She completed the medical exemption form, asked her OB/GYN and primary care doctors to sign the form, she asked her manager what she should do after the doctors would not sign the form, and she submitted a medical exemption request. Despite Ms. Even's best efforts, the employer chose to not approve Ms. Even's request because it required a doctor's signature on the request. The employer terminated Ms. Even's employment before October 29, 2021, when Iowa Code 96.5A went into effect. Therefore, Iowa Code 96.5A is of no effect in this matter. The employer has failed to establish disqualifying, job-related misconduct on the part of Ms. Even. Benefits are allowed.

**DECISION:**

The November 9, 2021, (reference 01) unemployment insurance decision is reversed. Ms. Even was discharged from employment for a non-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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February 23, 2022  
Decision Dated and Mailed

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