

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**AARON W. VULICH**  
Claimant

**TRI CITY ELECTRIC CO. OF IOWA**  
Employer

**DIA APPEAL NO. 21IWDUI2012  
APPEAL 21A-UI-03067**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/26/20  
Claimant: APPELLANT (1)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)(a) – Discharge for Misconduct  
Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(10) – Able & Available – Availability Disqualifications

**STATEMENT OF THE CASE:**

The Claimant/Appellant filed an appeal from the January 12, 2021 (reference 01) unemployment insurance decision that held Claimant ineligible for unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 8, 2021. Claimant, Mr. Aaron Vulich, participated personally. The Employer, Tri City Electric Co. of Iowa (Tri City), did not participate. No exhibits were submitted.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer?  
Was claimant discharged for misconduct?  
Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed off and on with Tri City since 2012. His position at Tri City was as a communication technician. Claimant would install communication infrastructure at work sites for public and private entities, when those entities hired Tri City for a particular job. Essentially, Claimant installed anything to do with internet networks, but did not handle traditional electrician duties associated with 120-volt lines or outlets. Claimant would be assigned a schedule that could vary weekly. Claimant worked full time, typically weekdays, and, sometimes, on weekends as needed for a particular project. Claimant was paid by the hour and was not a salaried employee. Claimant's direct supervisors, or project managers, were Mr. Trevor Williams and Mr. Tony Mayer. It was an indefinite employment relationship, i.e. it was not scheduled to only last a set or certain amount of time or defined by completion of any particular project(s).

In 2020, as the COVID-19 pandemic became pervasive, more and more of the projects for Tri City mandated the use of face masks or coverings for workers at the work sites. In turn, Tri City began to mandate its employees wear face masks to comply with the requirements for the projects. Claimant was moved from site to site to enable him to work without a face mask, presumably when he would not have contact with others. Tri City did this to accommodate Claimant's personal beliefs regarding face masks because it, as the employer, was satisfied with Claimant's work. Indeed, he was considered a good employee, not a problem, and Claimant generally testified to a good working relationship with Tri City.

However, as the COVID-19 pandemic continued, non-State entities such as counties and municipalities began to require the use of face masks or coverings, especially in the City of Cedar Rapids and Johnson County. Those were the locations where Claimant was typically hired for projects on behalf of Tri City. Accordingly, work began to dry up for Claimant because he refused to wear a face mask based on his personal belief or credo.<sup>1</sup> It was indicated to Claimant that he may be let go or fired by the project managers. Claimant's last work day was August 10, 2020, the day the derecho struck Iowa.

Eventually, on August 24, 2020, Tri City terminated Claimant. Mr. Mayer delivered a "pink slip" or notice of termination to Claimant. The reason given for the termination was Claimant's refusal to wear a face mask. The termination notice is not in the record. Claimant testified he was at all times and is currently able and available to work. There is adequate work available to Claimant. However, he will not wear a face mask or covering due to his conscientious objection to them and there were no other non-face mask jobs available to him at Tri City. He has not yet returned to Tri City to seek work, but would return if there were no mask mandate. Further, other employers or contractors also have a mask mandate. On this record, Claimant was a good worker for Tri City, was not facing any disciplinary action, but is unemployed solely due to the COVID-19 pandemic and his refusal to wear any face covering.

Claimant submitted a claim for unemployment insurance benefits. On January 12, 2021, Iowa Workforce Development determined Claimant was not eligible for unemployment insurance benefits and Tri City's account would not be charged. The decision stated: "Our records indicate you voluntarily quit work on 08/24/20 because you were dissatisfied with your work conditions. Your quitting was not caused by your employer." Claimant's appeal stated, in part, "I did not quit. I was fired."

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<sup>1</sup> In Claimant's appeal, he stated "I refused to wear a mask based on my religious beliefs." However, at the hearing, Claimant testified his refusal to wear a face mask was a personal belief and not a religious tenet requirement of either his faith or any particular sectarian doctrine. *Compare Sherbert v. Verner*, 374 U.S. 398, 406 (1963) (holding that state law requiring availability to work on a Saturday in order to be eligible for unemployment compensation, in violation of a Seventh Day Adventist prohibition, while excepting work on Sundays, violated the First Amendment). Regardless, this administrative forum does not have authority to rule on constitutional issues. "[An appellant] is required to raise constitutional issues at the agency level, even though the agency lacks the authority to decide the issues, in order to preserve the constitutional issues for judicial review." *Endress v. Iowa Dep't of Hum. Servs.*, 944 N.W.2d 71, 83 (Iowa 2020) (emphasis added; *citing McCracken v. Iowa Dept. of Human Services*, 595 N.W.2d 779, 785 (Iowa 1999)).

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge finds that the Claimant either voluntarily quit without good cause attributable to the employer, or alternatively, was terminated for misconduct. In either event, he is disqualified from benefits.

The Iowa Supreme Court has recognized that unemployment insurance benefits cases, generally, “balance two competing interests.”

On the one hand, we have the interest of the person who loses [a job] in this way—the remedial benefits of unemployment insurance can accomplish much to alleviate the misery of a period of unemployment. On the other hand, we have the interests of the health of the employment insurance fund, all other people who may draw from the fund, and the employers who contribute to the fund; allowing those who become unemployed due to their own fault under the law to draw from the fund would deplete the fund at the expense of those who were not at fault and would defeat one of the goals of the law, namely to provide financial incentives to employers to refrain from terminating employees for disapproved reasons.

*Irving v. Emp. Appeal Bd.*, 883 N.W.2d 179, 187 (Iowa 2016) (emphasis added; citations omitted). “While the statute is to be construed liberally, its underlying purpose is to minimize the burden placed upon the employee who is unemployed involuntarily, through no fault of his or her own.” *Langley v. Emp. Appeal Bd.*, 490 N.W.2d 300, 303 (Iowa Ct. App. 1992) (citations omitted).

Typically, 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). Conversely, where a claimant who confronts his employer and demands that he be discharged and is subsequently discharged actually quits his employment. Job insurance benefits “are not determinable by the course of semantic gymnastics.” *Frances v. IDJS*, (Unpublished Iowa App 1986). Ultimately, the Iowa Supreme Court has held: “Based upon our review of the statute, the authorities, and applicable caselaw, we conclude that a voluntary quit as a matter of law requires a volitional act on the part of the employee.” *Irving v. Emp. Appeal Bd.*, 883 N.W.2d 179, 209 (Iowa 2016).

Here, Claimant intentionally and voluntarily refused to wear a face mask or covering. That was a requirement to working for Tri City work projects. Accordingly, it appears that the Iowa Workforce Development worker properly determined this was a “voluntary quit” case.

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.

"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).

In this case, Claimant felt compelled to refuse to wear a face mask or covering due to his own personal beliefs. He appears sincere in his belief – it cost him his job. But, sincerity alone does not constitute "good cause." Rather, his refusal to wear a face mask must be reasonable to the average person. In this COVID-19 pandemic, Tri City (or its clients') requires face coverings for its employees at project sites. Such a mandate is not unreasonable to the average person – at least on this record. Accordingly, by refusing to wear a face mask or covering when required to do so, whether by the entity hiring Tri City or by Tri City itself, the Claimant voluntarily quit his employment without good cause attributable to Tri City.

Moreover, Iowa Code § 96.5(1)(f) (emphasis added) 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. But the individual shall not be disqualified if the department finds that:

f. The individual left the employing unit for not to exceed ten working days, or such additional time as may be allowed by the individual's employer, for compelling personal reasons, if so found by the department, and prior to such leaving had informed the individual's employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist the individual returned to the individual's employer and offered the individual's services and the individual's regular or comparable work was not available, provided the individual is otherwise eligible; except that during the time the individual is away from the individual's work because of the continuance of such compelling personal reasons, the individual shall not be eligible for benefits.

Iowa Admin. Code r. 871-24.25(20), (21), and (27) provide:

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: . . .

24.25(20) The claimant left for compelling personal reasons; however, the period of absence exceeded ten working days.

24.25(21) The claimant left because of dissatisfaction with the work environment.

....

24.25(27) The claimant left rather than perform the assigned work as instructed.. . .

Here, Claimant (and, apparently, Tri City) agrees that Claimant was terminated because of his refusal to wear a face mask. Accordingly, although the separation was for a compelling personal reason, it was without good cause attributable to the employer and benefits must be denied.

However, sometimes employees who quit employment are still, nonetheless, eligible for unemployment insurance benefits.

The following are reasons for a claimant leaving employment with good cause attributable to the employer:

24.26(1) A change in the contract of hire. An employer's willful breach of contract of hire shall not be a disqualifiable issue. This would include any change that would jeopardize the worker's safety, health or morals. The change of contract of hire must be substantial in nature and could involve changes in working hours, shifts, remuneration, location of employment, drastic modification in type of work, etc. Minor changes in a worker's routine on the job would not constitute a change of contract of hire. . . .

24.26(4) The claimant left due to intolerable or detrimental working conditions. . . .

24.26(16) The claimant left employment for a period not to exceed ten working days or such additional time as was allowed by the employer, for compelling personal reasons and prior to leaving claimant had informed the employer of such compelling personal reasons, and immediately after such compelling personal reasons ceased to exist or at the end of ten working days, whichever occurred first, the claimant returned to the employer and offered to perform services, but no work was available. However, during the time the claimant was away from work because of the continuance of this compelling personal reason, such claimant shall be deemed to be not available for work.

Iowa Admin. Code r. 871-24.26(1), (4), (16) (96).

Here, there is no employment contract in the record offered by either party. Thus, no determination of any breach of contract can be made. Likewise, Claimant did not testify the working conditions at project sites were intolerable or detrimental; e.g. he was forced to work in a dangerous situation. Claimant testified he would be breathing more carbon dioxide by wearing a mask, but offered no medical professional testimony that the carbon dioxide level would pose a health risk. The record does not contain, for instance, Claimant's medical records showing he would be endangered by wearing a face mask or covering. Rather, his personal belief against wearing a face mask or covering was the objection. Without such a personal objection, Claimant could work today. Finally, Claimant "was away from work because of the continuance of this personal compelling reason," i.e. his refusal to wear a face mask, thus "he shall be deemed to be not available for work." Cf. Iowa Code § 96.4(3) ("An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that: . . . 3. The individual is able to work, is available for work, and is earnestly and actively seeking work. . . .").

Nonetheless, Claimant maintains he did not voluntarily quit; rather he was fired or discharged from his job due to his refusal to wear a face mask or covering. Claimant points out he was not subject to disciplinary proceedings prior to the discharge. However, that would still not avail him relief for the following reasons.

“An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits: . . . 2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment: . . .” Iowa Code § 96.5(2).

Such misconduct must be “substantial.” *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* 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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

In *Cook v. Iowa Dep’t of Job Serv.*, 299 N.W.2d 698, 702 (Iowa 1980), a driver racked up so many traffic violations, the employer terminated him (“had to let him go”) “because of Cook's self-inflicted uninsurability.” “The district court correctly construed the law in classifying this case as a separation for misconduct[.]” *Id.* “Misconduct connotes volition. A failure in good performance which results from inability or incapacity is not volitional and is thus not misconduct.” *Huntoon v. Iowa Dep’t of Job Servs.*, 275 N.W.2d 445, 448 (Iowa 1979), *holding modified by Cospers v. Iowa Dep’t of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

Here, either Tri City, the general contractor(s), the particular entity hiring the work, or some combination thereof for the relevant project, has directed, ordered, or otherwise required personnel at a work site to wear face masks or coverings. Claimant refuses to do so. A volitional refusal to comply with workplace rules would constitute a “deliberate disregard of the employer’s interests” or substantial misconduct. “We determine willful misconduct can be established where an employee manifests an intent to disobey the reasonable instructions of his employer.” *Myers v. Iowa Dep’t of Job Serv.*, 373 N.W.2d 507, 510 (Iowa Ct. App. 1985).

Nonetheless, even though Claimant was not eligible for regular unemployment insurance benefits under state law during this time, he may be eligible for federally funded unemployment insurance benefits under the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”), Public Law 116-136 during this time. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that generally provides up to 39 weeks of unemployment benefits. An individual receiving PUA benefits may also receive the weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if she is eligible for such compensation for the week claimed. Claimant has not, apparently, applied for PUA.

Although Claimant voluntarily refused to wear a face mask or covering as required by Tri City for project work sites, because his availability may be related to the COVID-19 pandemic, he may be eligible for PUA. However, Claimant’s PUA is not a certified issue in this case.

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits due to disqualifying separations, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your**

**eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.

**DECISION:**

The January 12, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant voluntarily quit and is separated from employment without good cause attributable to employer. Alternatively, Claimant was discharged for misconduct. Unemployment benefits are withheld in regards to this employer until such time as Claimant is deemed eligible.



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Forrest Guddall  
Administrative Law Judge  
Iowa Department of Inspection and Appeals  
Wallace State Office Building, Third Floor  
Des Moines, IA 50319

March 15, 2021

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Decision Dated and Mailed

FG/lb

CC: Aaron W. Vulich, Claimant (by first class mail)  
Tri City Electric Co. of Iowa, Employer (by first class mail)  
Nicole Merrill, IWD (email)  
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