

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARIA Z AYALA
Claimant

ALLSTEEL INC
Employer

APPEAL 21A-UI-04616-S2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/09/20
Claimant: Appellant (5)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 28, 2021, (reference 02) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on April 12, 2021. Claimant Maria Z. Ayala participated through a Spanish interpreter with CTS Language Link. Claimant was represented by attorney Andrew Bribriesco. Employer Allsteel, Inc. did not register for the hearing and did not participate.

ISSUES:

Did claimant voluntarily leave the employment without good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

Is 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 full time as an assembler from November 2018, until August 9, 2020, when her employment ended.

Claimant suffered a work-related injury on March 8, 2019. Claimant received permanent work restrictions from her surgeon on May 4, 2020, and was released to return to work. She has permanent restrictions of no lifting from floor to waist level with both arms greater than 21 pounds occasionally or 11 pounds frequently, no lifting from waist to shoulder level greater than 13 pounds occasionally and 7 pounds frequently, and only occasionally overhead reaching with the left side. See Exhibit A. Claimant presented her new restrictions to employer. Employer explored two positions suggested by claimant, but determined she could not perform those positions within her restrictions. Employer was unable to accommodate claimant's work restrictions that stemmed from her work-related injuries. On August 9, 2020, employer terminated claimant's employment because it was unable to accommodate her work restrictions.

Claimant previously worked as a house cleaner.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not voluntarily quit but was discharged from employment for no disqualifying reason.

Iowa Code section 96.5 provides, in relevant part:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

...

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 provides, in relevant part:

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).

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected

misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left her employment. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It 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 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 did not tell employer that she was quitting her employment. She also did not have the option to continue her employment relationship after August 9, 2020, because employer terminated her employment. As employer cannot establish that claimant voluntarily ended the employment, the case must be analyzed as a discharge.

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.

Employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning which led to the end of her employment. Claimant was physically unable to perform her duties within her restrictions. This is not a deliberate or negligent action on claimant's part. Claimant was discharged for no disqualifying reason.

The next issue to decide is whether claimant is able to and available for work. For the reasons that follow, the administrative law judge concludes claimant is not able to and available for work effective August 9, 2020.

Iowa Code section 96.4(3) provides:

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. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph

"c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. This means that when evaluating whether a person with a protected disability is able and available to work we must take into account the reasonable accommodation requirements imposed on employers under federal, state, and local laws. *Id.*

Claimant is searching for any type of job she could perform within her restrictions; however, she has not yet found such work. Claimant would not be able to perform her previous position as a house cleaner with her current restrictions. Given claimant's experience, she has failed to prove that she has available to her reasonably suitable full-time employment so long as those restrictions persist. Claimant is not able and available for work at this time and benefits are denied.

DECISION:

The January 28, 2021, (reference 02) unemployment insurance decision is modified with no change in effect. Claimant did not voluntarily quit employment; she was discharged for no disqualifying reason. However, claimant is not able to and available for work and regular, state-funded unemployment insurance benefits are denied.



Stephanie Adkisson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

April 15, 2021
Decision Dated and Mailed

sa/kmj