

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JODI L HOLDGRAFER**  
Claimant

**APPEAL 22A-UI-06191-S2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DUBUQUE STAMPING & MFG INC**  
Employer

**OC: 02/13/22  
Claimant: Appellant (2)**

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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/appellant filed an appeal from the March 4, 2022, (reference 01) unemployment insurance decision that denied benefits based upon a finding claimant was discharged due to excessive unexcused absenteeism. The parties were properly notified of the hearing. A telephone hearing was held on April 21, 2022. Claimant Jodi L. Holdgrafer participated personally. Employer Dubuque Stamping & Mfg., Inc. did not participate.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Is the claimant able to and available for work?

**FINDINGS OF FACT:**

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's testimony: Claimant was employed full-time as a utility operator from February 1, 2021, and was separated from employment on January 19, 2022.

Claimant became ill with COVID in December 2021 and missed approximately one month of work. She returned to work on or around January 1, 2022. She became ill again and received a doctor's note excusing her from work through January 7, 2022. Claimant still did not feel well enough to return by January 10, 2022, so claimant called into work each day to report her absences due to illness. On or around January 11, 2022, claimant visited her doctor who told her she should not return to work until she felt stronger. On January 12, 2022, claimant reported her absence and notified employer that her doctor advised her to remain off work until she felt stronger, and she did not know when she would be able to return to work.

Employer sent claimant a letter dated January 19, 2022. The letter notified claimant her employment was terminated for violating its rule on five consecutive absences without completing a leave of absence form or providing sufficient information to warrant the continued absence. Employer did not reach out to claimant after her January 12, 2022, call to request

additional information. Claimant was unaware she needed to provide further information beyond the information she gave to employer on January 12, 2022.

Claimant received no prior warnings for attendance issues.

Claimant filed an initial claim for unemployment insurance benefits effective February 13, 2022. Claimant recovered from her illness and had no barriers to employment effective January 23, 2022.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed.

Iowa Code § 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 Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge.

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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). 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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.

Here, claimant was discharged for violating employer's rule requiring the production of sufficient information in order to take more than five days off of work at a time. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it 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.

Additionally, 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, employer incurs potential liability for unemployment insurance benefits related to that separation. Employer did not present any evidence that claimant engaged in job-related misconduct. As a result, employer has not met the burden of proof to establish that claimant engaged in misconduct that would disqualify her from benefits. As such, benefits are allowed.

The next issue to be determined is whether claimant is able to and available for work. For the reasons that follow, the administrative law judge concludes she is.

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.

An individual claiming benefits has the burden of proof that she is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

As of January 23, 2022, claimant was physically able to perform work. Claimant had no other barriers to employment. Claimant has established that she was able to and available for work. Benefits are allowed provided claimant is otherwise eligible.

**DECISION:**

The March 4, 2022, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason and is able to and available for work. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



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

April 26, 2022  
Decision Dated and Mailed

sa/mh