

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

COURTNEY L HELLER
Claimant

APPEAL NO. 24A-UI-06411-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

COLLEGE COMMUNITY SCHOOL DISTRICT
Employer

OC: 06/09/24
Claimant: Appellant (1)

Iowa Code Section 96.5(2)(a) & (d) – Discharge
Iowa Administrative Code Rule 87124.26(21) – Quit in Lieu of Discharge

STATEMENT OF THE CASE:

On July 13, 2024, the employer filed a timely appeal from the July 3, 2024 (reference 01) decision that allowed benefits to the claimant, provided she was otherwise eligible, and that held the employer's account could be charged for benefits, based on the deputy's conclusion the claimant was discharged on June 10, 2024 for no disqualifying reason. After due notice was issued, a hearing was held on July 30, 2024. Courtney Heller (claimant) did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Jeri Mortiz represented the employer and presented additional testimony through Kara Deberg. Exhibits 1, 2 and 3 were received into evidence. The administrative law judge took official notice of the agency administrative record of benefits disbursed to the claimant, which record indicates that no benefits have been disbursed to the claimant.

ISSUES:

Whether the claimant was laid off, was discharged for misconduct in connection with the employment, or voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Courtney Heller (claimant) was employed by College Community School District as a full-time, sixth-grade science teacher. Jennifer McDonald, Principal, and Kara Deberg, Associate Principal, were Ms. Heller's supervisors. Ms. Heller began her full-time employment during the 2022-2023 academic year and worked under an annual contract. Ms. Heller continued in the employment during the 2023-2024 academic year under a new annual contract. Ms. Heller last performed work for the employer on April 4, 2024.

On April 5, 2024, Ms. Heller began a nine-week approved leave of absence under the Family and Medical Leave Act (FMLA) so that she could undergo two surgeries and recover from the surgeries. The first surgery was set for April 11, 2024. Ms. Heller's health issues were not

related to the employment. The nine-weeks of FMLA leave were to expire on Friday, June 7, 2024. Monday, June 10, 2024 was the scheduled last day of the 2023-2024 academic year and would have been Ms. Heller's last scheduled workday for the academic year. Ms. Heller's annual contract was set to expire on June 30, 2024.

On March 26, 2024, Associate Principal Deberg completed an evaluation of Ms. Heller's performance and determined that Ms. Heller was not meeting the classroom management standards required for a probationary second year teacher and required to be eligible for a third annual teaching contract. Principal McDonald and Associate Principal Deberg determined that the District would not offer Ms. Heller a teaching contract for the 2024-2025 academic year. The pair planned to meet with Ms. Heller and with Jeri Moritz, Executive Director of Human Resources and Equity, on April 4, 2024 to notify Ms. Heller of their decision, prior to the start of Ms. Heller's approved leave of absence.

Principal McDonald cancelled the April 4, 2024 meeting after she spoke one-on-one with Ms. Heller and conveyed to Ms. Heller the option of resigning from the employment or being discharged from the employment. When faced with the choice, Ms. Heller elected to resign from the employment in lieu of being discharged. On April 3, 2024, Ms. Heller submitted a resignation email in which she indicated she was resigning effective June 30, 2024, the last date of her contract.

On April 22, 2024, the School Board approved Ms. Heller's resignation from the employment.

Ms. Heller established an original claim for unemployment insurance benefits that was effective June 9, 2024. Ms. Heller has not received benefits in connection with the claim.

REASONING AND CONCLUSIONS OF LAW:

Iowa Administrative Code rule 87124.1(113) characterizes the different types of employment separations as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). 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. See Iowa Administrative Code rule 87124.25.

Iowa Administrative Code Rule 87124.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

In analyzing quits in lieu of discharge, the administrative law judge considers whether the evidence establishes misconduct that would disqualify the claimant for unemployment insurance benefits.

The evidence in the record establishes that Ms. Heller tendered her resignation when the employer gave her the choice of resigning from the employment or being discharged. Ms. Heller's quit was not voluntary.

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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.

...

d. For the purposes of this subsection, "misconduct" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

- (1) Material falsification of the individual's employment application.
- (2) Knowing violation of a reasonable and uniformly enforced rule of an employer.
- (3) Intentional damage of an employer's property.
- (4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer, or a combination of such substances, on the employer's premises in violation of the employer's employment policies.
- (5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer's premises in violation of the employer's employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.

- (6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.
- (7) Incarceration for an act for which one could reasonably expect to be incarcerated that results in missing work.
- (8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.
- (9) Excessive unexcused tardiness or absenteeism.
- (10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.
- (11) Failure to maintain any license, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual's regular job duties, unless the failure is not within the control of the individual.
- (12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.
- (13) Theft of an employer or coworker's funds or property.
- (14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

See also Iowa Admin. Code r. 871-24.32(1)(a) (duplicating the text of the statute).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See 871 IAC 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See Iowa Administrative Code rule 87124.32(4).

The evidence in the record establishes a quit in lieu of discharge for no disqualifying reason. The effective date of the discharge was June 10, 2024. The evidence fails to establish misconduct in connection with the employment. Rather, the employer ended the employment after determining that Ms. Heller was unable to perform to the required standards, including the standards for effective classroom management. Ms. Heller is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The July 3, 2024 (reference 01) decision is AFFIRMED. The claimant quit in lieu of being discharged from the employment and was effectively discharged June 10, 2024 for no disqualifying reason. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.

A rectangular box containing a handwritten signature in black ink that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

August 7, 2024
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.