

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEANNA GIBSON
Claimant

APPEAL 21A-UI-13170-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEYS MARKETING COMPANY
Employer

OC: 03/21/21
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

On May 28, 2021, the claimant, Deanna Gibson, filed an appeal from the May 21, 2021, (reference 01) unemployment insurance decision that denied benefits based on the determination that claimant quit employment with the employer, Casey's Marketing Company, without good cause attributable to the employer. The parties were properly notified about the hearing. Pursuant to notice, the hearing was consolidated with 21A-UI-13171-AR-T. A telephone hearing was held on August 9, 2021. Claimant participated personally. The employer did not respond to the hearing notice and did not participate. Claimant's Exhibits A and B were admitted to the hearing record. The administrative law judge took official notice of the administrative record.

ISSUES:

Did the claimant voluntarily quit employment without good cause attributable to the employer, or was the claimant discharged for disqualifying job-related misconduct?
Was the claimant able to and available for work effective March 21, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a manager beginning in October 2011, and was separated from employment on April 28, 2020, when she was discharged.

Claimant initially went out on medical leave in November 2019 due to a need for emergency surgery. She was not released to return to work once she had recovered sufficiently from the surgery because of the COVID-19 pandemic and the risks it posed to her. The employer approved claimant for FMLA, initially, and then additional leave that was not FMLA-protected.

In March 2020, claimant submitted a doctor's note that excused her from work indefinitely due to the COVID-19 pandemic. Shortly thereafter, the employer called claimant and inquired when she would be able to come back to work. She told the employer that she did not know, and that

her doctor had not released her to work. On April 28, 2020, the employer called and notified claimant that her employment was being ended because she did not know when she could come back to work.

Claimant was not released to return to work by her physician until the week of March 21, 2021. At that time, she was released with the restriction that she could not stand or sit too long, and needed to move her legs around due to her medical condition.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged claimant for no disqualifying reason. Claimant was also able to and available for work effective March 21, 2021.

The first issue to be determined is whether claimant voluntarily quit or whether the employer discharged claimant.

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.

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 the employment. *Irving v. Emp't Appeal Bd.*, 15-0104, 2016 WL 3125854 (Iowa June 3, 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*, 492 N.W.2d 438.

The credible evidence in the record shows that the employer discharged claimant from employment. Claimant credibly denied having quit employment voluntarily. Instead, her employment was involuntarily terminated while she was on medical leave. Therefore, this case will be analyzed as a discharge and the employer bears the burden to establish disqualifying misconduct.

The second issue to be determined is whether the employer discharged claimant for disqualifying, job-related misconduct.

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).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all, provided the discharge is not contrary to public policy. However, if the employer 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.

Here, the evidence in the record shows that the employer ended claimant's employment while claimant was out on medical leave. This may have been a reasonable business decision or a decision made out of necessity. However, the employer has not shown that it ended claimant's employment due to any disqualifying, job-related misconduct. Therefore, the administrative law judge finds that the claimant was separated for no disqualifying reason.

The last question presented is whether claimant was able to and available for work effective March 21, 2021. The administrative law judge finds that she is.

Iowa Code § 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*, 508 N.W.2d at 723. The court in *Gilmore v. Emp't Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004), noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Claimant testified that her doctor released her to return to work effective the last week in March, or the week of March 21, 2021. She has some restrictions regarding the length of time she can sit or stand, and needs some flexibility with respect to being able to sit or stand as needed. However, she has no other work-related restrictions. Since the employment ended on April 28, 2020, claimant is no longer obligated to return to employer upon her medical release to offer her services. At that point, her ability to work is not measured by the job she held most recently, but by standards of her education, training, and work history. Since she is able to perform less strenuous jobs than she held in her work history, she is considered able to work even if she cannot yet return to a job as most recently performed for the employer. Claimant is able to and available for work effective March 21, 2021.

DECISION:

The May 21, 2021 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. She is able to and available for work effective March 21, 2021. Benefits are allowed, provided claimant is otherwise eligible.



Alexis D. Rowe
Administrative Law Judge

August 13, 2021
Decision Dated and Mailed

ar/kmj