

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**Chad Decker**  
Claimant

**DIA APPEAL NO. 22IWDUI0044  
IWD APPEAL NO. 21A-UI-19036**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**All Acquisitions, LLC**  
Employer

**OC: June 20, 2021  
Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant, Chad Decker, filed an appeal from the August 23, 2021, (Ref. 01) unemployment insurance decision that denied benefits based upon a determination that Claimant was ineligible to receive unemployment insurance benefits because Claimant was discharged for a “violation of a known company rule.” A telephone hearing was held on October 25, 2021. Claimant appeared and testified. Employer, All Acquisitions, LLC, failed to appear. The entire administrative file, including the decision under review, was admitted into the record, and the matter is now fully submitted.

**ISSUE(S):**

Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?

**FINDINGS OF FACT:**

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

Claimant commenced working full time for Employer in October of 2018 as a saw operator. In the latter part of April 2021, Claimant took FMLA leave to care for his spouse, who had complications after a significant surgery. At the time he took FMLA, he had some “points” for missing certain shifts, as his Employer had a point system for absences. After FMLA ended in the first part of June, Claimant missed two shifts, one of which was to care for his spouse that was still recovering and the other was likely due to him being unable to work due to his health condition. In both instances, Claimant called Employer in advance to inform it, and on June 15, 2021, Employer called Claimant to state his employment had ended because he had too many points.

On June 20, 2021, Claimant filed for unemployment benefits, and on August 23, 2021, the Department denied benefits finding he was discharged for a violation of a known company rule. Claimant

appeared, and the hearing, Claimant credibility testified he did not really understand the point system or where he fell into it. As Employer failed to appear, the record is devoid of evidence on its attendance policy or the specific details of any absences beyond the two in June before Claimant's discharge.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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.
2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

The employer has the burden of proving that a claimant's departure from employment was voluntary. Irving v. Emp't Appeal Bd., 883 N.W.2d 179, 209 (Iowa 2016). "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." Id. at 207 (citing Cook v. Iowa Dep't of Job Serv., 299 N.W.2d 698, 701 (Iowa 1980)).

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), (2)(a). 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 App. 1992). 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); Peck v. Emp't Appeal Bd., 492 N.W.2d 438 (Iowa App. 1992).

By contrast, discharge for misconduct means:

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.

Huntoon v. Iowa Dep't of Job Serv., 275 N.W.2d 445, 448 (Iowa 1979) (citing the then version of Iowa Admin. Code r. 871-24.32(1)). 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).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Newman v. Iowa Dep't of Job Serv., 351 N.W.2d 806 (Iowa Ct. App. 1984). 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 governing regulation provides further guidance on when absenteeism can rise to the level of misconduct. It states: "Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer." Id. § 24.32(7). For absenteeism to constitute misconduct under this rule, it first must be excessive, which is determined by looking at the length and number of instances leading to the termination as well as the "past acts and warnings" related to being absent. Higgins v. Iowa Department of Job Service, 350 N.W.2d 187, 192 (Iowa 1984). Generally speaking, a single instance of absenteeism will not be sufficient to be construed as misconduct. Irving v. Employment Appeal Bd., 883 N.W.2d 179, 201 (Iowa 2016).

Absenteeism must also be "unexcused" to be construed as misconduct, which occurs when the reason for absence is unrelated to either an illness or other reasonable grounds or is unreported. Cosper, 321 N.W.2d at 10. In interpreting what this means, courts have held absenteeism resulting from "personal problems or predicaments," such as oversleeping, car trouble, and difficulties with baby sitters, do not form the basis of reasonable grounds to be missing, but other conditions more involuntary in nature, such as individual being arrested and detained for a crime he or she did not commit, can be the basis of reasonable grounds. Irving, 883 N.W.2d 179. The reporting requirement is also situationally dependent, such as when an individual delays reporting an absence due to being incapacitated in a hospital. Id., 883 N.W.2d at 200-01 (reviewing case law).

In this case, no dispute exists Employer discharged Claimant from work on June 15, 2021. Claimant did not quit. As such, Employer bears the burden of proving misconduct, which it has not done. Besides the fact the Employer did not appear and confirm the violation of the known rules was, in fact, the absenteeism policy, the record is devoid of sufficient evidence to indicate any pattern of absences that could be construed as misconduct. Any of the absences prior to the FMLA are too attenuated given the limited record to be of much benefit, and the FMLA leave itself is, of course, protected conduct under federal law. With respect to the two absences after the return from FMLA

leave, they were for sickness, and Claimant timely reported both. These two matters, one of which may actually be related to the FMLA leave and required Employer to take action depending on what information it had at the time, are not the types of absences sufficient to be unexcused and show misconduct. If there was conduct capable of meeting the legal definition of misconduct, the Employer did not appear and present it. Accordingly, the Department's decision must be REVERSED.

**DECISION:**

The August 23, 2021 (Ref 01) unemployment insurance decision is REVERSED. Claimant is eligible to receive benefits. Any benefits claimed and withheld on this basis shall be paid.



---

Jonathan M. Gallagher  
Administrative Law Judge

10/26/2021

---

Decision Dated and Mailed

Cc: Chad Decker, Claimant (By mail)  
All Acquisitions, LLC, Employer (By mail)  
Karen Holett, IWD (By email)  
Joni Benson, IWD (By AEDMS)

**Case Title:** DECKER V. AII ACQUISITIONS LLC

**Case Number:** 22IWDUI0044

**Type:** Proposed Decision

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Jonathan Gallagher", with a long, sweeping horizontal stroke extending to the right.

---

Jonathan Gallagher, Administrative Law Judge