

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KIRSTIN S. BORN
Claimant

IOWA WORKFORCE DEVELOPMENT
Employer

Case No. 22IWDUI0096

APPEAL 22A-UI-02610

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/19/21
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the January 6, 2022 (reference 04) unemployment insurance decision denying benefits on the basis that the claimant had voluntarily quit without good cause attributed to the employer. The parties were properly notified of the hearing. A telephone hearing was held on April 22, 2022. Attorney Rick McConville represented the claimant, who appeared for the hearing and testified. Attorney Brook Axiotis represented the employer, Iowa Workforce Development (IWD). Former Promise Jobs Manager Angela Dickey¹ and IWD Human Resources Professional Cassandra Arreaola also appeared and testified. Administrative notice of the January 6, 2022 unemployment decision and the appeal request, along with Claimant's exhibits 100-131² and IWD exhibits A – AA. All documents were admitted into the record without objection.

ISSUES:

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

Whether the claimant was able to and available for work, or whether the claimant was on an approved leave of absence.

FINDINGS OF FACT:

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

Born began working for IWD in December 2003. She served in several positions throughout her tenure, most recently as a case manager in IWD's Promise Jobs division in the Des Moines, Iowa service center. Dickey was Born's direct supervisor during the relevant time period.

¹ Dickey retired from IWD effective March 31, 2022.

² Claimant's exhibit 118 was mistakenly omitted from the claimant's submission. The document is duplicative of IWD exhibit R, however.

Born's duties as case manager included intake and orientation of new participants, developing and executing family investment agreements (FIAs), and arranging the support necessary to ensure participants fulfilled their goals and responsibilities under the FIA. Because the service centers lack separate clerical staff, case managers also must perform all necessary administrative tasks, including faxing, mailing, and processing documents received from clients.

In 2015, Born was diagnosed with a rare form of myasthenia gravis, a chronic autoimmune disorder marked by muscle weakness. In particular, Born experiences weakness in her legs, and difficulty with speech, swallowing, eating and sometimes, breathing. Despite her condition, Born was able to work in-person, full-time through 2019.

The treatment for myasthenia gravis involves the infusion of immunosuppressant medications in four-week cycles administered three times per year. Knowing she was immunocompromised, Born requested and was granted permission to work remotely full-time beginning in March 2020. Between five and seven other employees in the Des Moines service-area also worked remotely during this time period. Born was able to "meet" and orient new clients via Zoom, and communicate with existing clients through telephone or email communications. If Born needed help with in-person, administrative tasks, another case manager would help her. In return, Born took on additional intake responsibilities, which could be performed virtually. Due to a dramatic increase in the number of persons applying for unemployment insurance benefits (UI) during the Covid-19 pandemic, Born also was required to devote approximately 20% of her time to processing UI claims.

In the spring of 2021, IWD began re-opening its service centers to the public. Accordingly, it required all employees to return to full-time, in-person work.

Born's treating neurologist and hematologist did not want Born to return to the office at this time, however. Supported by documentation from these physicians, Born applied for and was granted an additional extension of her telework agreement. IWD directed her to return to the office on Monday, June 21, 2021.

Meanwhile, although Born received two doses of the Moderna vaccination for Covid-19 in March and April, 2021, bloodwork drawn in early June 2021 showed the immunosuppressant medications used to treat Born's myasthenia gravis also prevented her body from generating Covid antibodies from the vaccinations. On June 16, 2021, with the recommendations of and documentation from her physicians, Born requested an additional extension of her telework agreement.

IWD denied the request, and directed that Born return to the office no later than Monday, July 19, 2021. In a letter to Born confirming the denial, Axiotis stated that IWD considered interacting with the public as an essential function of Born's job.

Born was then allowed to exhaust her (presumably unpaid) Family Medical Leave Act (FMLA) leave. During this time period, she attempted another two-dose course of the Pfizer Covid-19 vaccine. Unfortunately, bloodwork drawn after the second dose again failed to show the production of antibodies. In a letter dated September 30, 2021, infectious disease specialist Dan Fulton, M.D. wrote a letter in which he stated that, despite vaccination, Born remained vulnerable to severe illness attributed to Covid-19. He recommended that she continue working from home through at least April 1, 2022.

On October 18, 2021, IWD granted Born's request for an additional, eight week unpaid medical leave. The approval letter indicated a return date of December 10, 2021. IWD subsequently ordered a HEPA air filter and plexiglass shield to install around Born's work station upon her return. The equipment was stored in Dickey's office while Born remained on medical leave.

In response to an inquiry from Born, on December 6, 2021, Arreola sent Born a long-term disability (LTD) insurance application and related documents. Arreola also advised Born that regardless of a pending long-term disability application, she was expected back in the office on December 19, 2021.

Born completed and submitted the LTD insurance application. She testified credibly during the hearing that at no time during the application process did she represent that she was disabled from all employment. Rather, Born indicated that she could—and preferred to—continue working remotely, but that her medical condition placed her at high risk of severe illness from Covid-19.

Born did not report to work on December 10, 2021, or at any time thereafter. In a letter dated December 17, 2021, Dickey informed Born she was terminated effective that day, due to the failure to follow an IWD work rule prohibiting employees from being absent for three consecutive work days without authorization. Born applied for unemployment benefits on December 19, 2021, due to her need for income while the LTD insurance application was pending. Born testified that she has actively been seeking alternative employment that would allow her to work remotely since her termination.

On January 6, 2022, following a fact-finding interview, IWD denied benefits on the basis that Born voluntarily quit her employment because she was dissatisfied with her work conditions. Born has appealed IWD's decision.

REASONING AND CONCLUSIONS OF LAW:

A. Whether Claimant was Discharged for No Disqualifying Reason

Despite the IWD representative's January 6, 2022 decision, counsel for both parties agreed during the April 22, 2022 hearing that Born did not voluntarily quit her employment. Rather, IWD terminated Born effective December 17, 2022 due to her alleged failure to follow IWD work rules. As set forth above, IWD stated in its December 17, 2022 letter of termination that as of that date, Born had been absent from work without authorization for three consecutive days. The "voluntary quit" provisions under Iowa Code § 96.5(1) therefore are not at issue in the present appeal.

Iowa Code § 96.5(2)a provides that an individual shall be disqualified for benefits "If the department finds that the individual has been discharged for misconduct in connection with the individual's employment." Iowa Code § 96.5(2). The employer has the burden of proof in establishing disqualifying job misconduct. *Id.* at 11.

Iowa Workforce Development rules defines "misconduct" in this context 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.

Iowa Admin. Code r. 871-24.32(1)a. Notably, "Unemployment statutes should be interpreted liberally to achieve the legislative goal of minimizing the burden of involuntary unemployment." *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 10 (Iowa 1982). As recently clarified by the Iowa Supreme Court: "The standard an employer must meet to sustain disqualification for unemployment benefits is more demanding than the standard ordinarily required to support a termination of employment for just cause." As summarized by the Iowa Supreme Court: "The apples of disqualification for unemployment benefits should not be conflated with the oranges of just-cause terminations." *Irving v. Employment Appeal Bd.*, 883 N.W.2d 179, 195-96 (Iowa 2016); *see also Gaborit v. Employment Appeal Bd.*, 743 N.W.2d 554, 558 (Iowa Ct. App. 2007) (violation of known work rule does not establish *per se* disqualification from receiving unemployment compensation).

Assuming *arguendo* that Born violated a work rule when she did not report to the Des Moines service center for three consecutive days after being told to do so--*and* that this violation justified her December 17, 2021 termination³--her actions do not show "willful or wanton disregard" of IWD's interest or constitute a "material breach" of her employment duties. Nor has IWD proved Born acted with wrongful intent or evil design. *See, e.g., Billingsley v. Iowa Dep't of Job Servs.*, 338 N.W.2d 538, 540 (Iowa Ct. App. 1983) (distinguishing between standard for discharging an employee for known violation of work rules and standard to establishing misconduct sufficient to deny unemployment compensation). Rather, Born wrote numerous letters and emails to IWD staff showing she took pride in her job and wanted to continue working for IWD, but that until she was successfully vaccinated against Covid-19, exposure to the general public placed her at serious risk of harm. Born proved she was able to perform the vast majority of her job functions remotely, and was willing to take on extra tasks to offset any imposition placed on other case managers. This is not a situation where Born benefited monetarily from her actions to the detriment of IWD. *But see Pongdara v. Employment Appeal Board*, 759 N.W.2d 813 (Table), 2008 WL 4725334 *4 (Iowa Ct. App. Oct. 29, 2008) (casino employee's loan from patron violated workplace conflict of interest policy by giving employee

³ As stated during the hearing, this is not the forum in which to evaluate the appropriateness of IWD's decision.

motive to deal cards improperly). Choosing to follow the advice of her physicians and work remotely to protect her health does not constitute disqualifying misconduct.

B. Whether Claimant was Able and Available for Work

Granted, an unemployed individual is eligible for unemployment insurance benefits only if the individual is able to and available for work. Iowa Code § 96.4(3); Iowa Admin. Code r. 871-24.22. In defining the phrase, "able to work," the applicable regulation clarifies: "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.*" Iowa Admin. Code r. 871-24.22(1). (emphasis added). It is the claimant's burden to establish that he or she is "able to work, available for work, and earnestly and actively seeking work." *Id.* § 24.22.

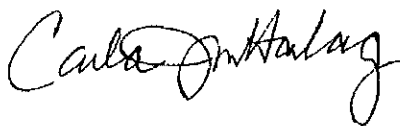
Additionally, "[a] leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period." Iowa Admin. Code r. 871-24.22.

Upon the final extension of her telework agreement, Born requested and received first FMLA leave and subsequently a medical leave of absence to avoid exposure to the virus until she was successfully vaccinated. Because these absences were negotiated by the parties, Born was not available for work and was not eligible for unemployment insurance benefits between July 19, 2021 and December 10, 2021.

Born became eligible to work as of December 10, 2021—the expiration of her voluntary medical leave of absence. This also appears to be the date she represented to the LTD insurance carrier that she was able to work remotely in some capacity on a full-time basis, but simply not in her customary occupation as an IWD case manager.

DECISION:

The January 6, 2022 (reference 04) unemployment insurance decision is **REVERSED** and **REMANDED** to IWD for an award of benefits effective December 10, 2021, provided Born is otherwise eligible.



Carla J. Hamborg
Administrative Law Judge

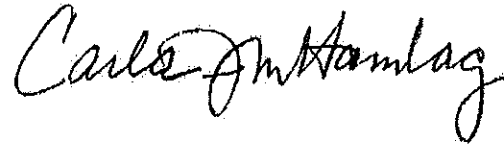
April 26, 2022
Decision Dated and Mailed

CJH/aa

cc: Kristin Born, Claimant (by first class mail)
Michael J. Carroll, Attorney for claimant (by first class mail and email)
Iowa Workforce Development, Employer (by first class mail)
Brooke Axiotis, IWD (by email)
Natali Atkinson, IWD (by email); Joni Benson, IWD (by AEDMS)

Case Title: BORN V. IOWA WORKFORCE DEVELOPMENT
Case Number: 22IWDUI0096
Type: Order

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Carla M. Hamborg". The signature is written in a cursive style with a large initial "C" and "H".

Carla Hamborg, Administrative Law Judge