

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

CHERYL L BOREL
Claimant

APPEAL 24A-UI-03932-PT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHRI SIDDHI VINAYAK MOTEL INC
Employer

**OC: 03/17/24
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.3(7) – Overpayment of Benefits
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-finding Interview

STATEMENT OF THE CASE:

The employer, Shri Siddhi Vinayak Motel Inc., filed a timely appeal from the April 9, 2024 (reference 01) unemployment insurance decision that held the claimant eligible for benefits after a separation from employment. The parties were properly notified of the hearing. A telephone hearing was held on May 3, 2024. The claimant, Cheryl Borel, did not participate. The employer participated through Owner Dharmendra Patel and Sales Manager James Burbridge. The administrative law judge took official notice of the administrative record.

ISSUES:

Did the claimant voluntarily quit without good cause attributable to the employer, or was the claimant discharged for disqualifying, job-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for Shri Siddhi Vinayak Motel Inc. on August 4, 2022. The claimant last worked as a full-time Manager on February 9, 2024. The claimant was separated from employment on March 24, 2024, when she was discharged.

On February 9, 2024, the claimant was hospitalized for a nonwork-related condition. On February 10, 2024, the claimant called and informed the employer that she was undergoing surgery for her condition, but that she hoped to return to work in a few days. The owner agreed to allow the claimant to take a few days off while she recovered from surgery.

After the claimant's surgery, the claimant developed a sepsis infection in her foot, which required the claimant to remain hospitalized as she underwent treatment and remained under close medical observation. After the claimant developed the infection, the claimant called the employer, explained what had happened, and requested to extend her leave of absence through March 23, 2024. The employer agreed to extend the claimant's medical leave of absence and informed the claimant that he expected her to return to work on March 24, 2024.

The claimant remained hospitalized through mid-March 2024. On March 15, 2024, the claimant's medical provider sent the employer a letter stating that the claimant would not be able to return to work until March 29, 2024, because the claimant needed additional time to recover from the infection. The employer declined to extend the claimant's medical leave of absence through March 28, 2024.

On March 24, 2024, the claimant did not arrive for her scheduled shift. A couple hours after the start of the claimant's shift, the employer called and informed the claimant that he was no longer able to hold her position open and asked the claimant to come pick up her personal belongings and drop off her work keys. The next day, the claimant arrived at work, dropped off her keys, and retrieved her belongings.

The administrative record indicates that the claimant filed a claim for unemployment insurance benefits effective March 17, 2024. Her weekly benefit amount is \$468.00. The claimant has filed weekly claims for the six-weeks between March 17 and April 27, 2024, and has received total benefits of \$2,340.00. The employer participated in the fact-finding interview. The issue of whether the claimant is able to and available for work was addressed by Iowa Workforce Development in a decision dated April 4, 2024, reference number 03.

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 section 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 Code section 96.5(2)(a) and (d) provide:

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 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.

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.

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 the 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).

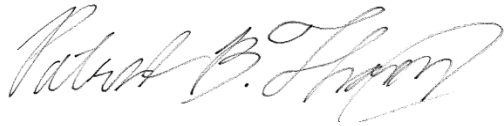
Where an employee did not voluntarily quit but was terminated while absent under medical care, the employee is allowed benefits and is not required to return to the employer and offer services pursuant to the subsection (d) exception of Iowa Code section 96.5(1). *Prairie Ridge Addiction Treatment Servs. v. Jackson and Emp't Appeal Bd.*, 810 N.W.2d 532 (Iowa Ct. App. 2012). The claimant is not required to return to the employer to offer services after she recovers because she has already been involuntarily terminated from the employment while under medical care. Although an employer is not obligated to provide light duty work for an employee whose illness or injury is not work related unless reasonable accommodation can be offered, the involuntary termination from employment while under medical care was a discharge from employment. Thus, the burden of proof shifts to the employer.

In this case, the claimant was on a leave of absence, as her medical provider would not release the claimant to return to work until March 29, 2024, when she was fully recovered from her infection. The claimant was still under medical care and had not yet been released to return to work as of March 24, 2024, the date of separation. The claimant's employment was terminated while she was on leave under medical care. As such, no disqualifying reason for the separation has been established. Benefits are allowed.

The issue of whether the claimant is able to work and available to work was addressed by Iowa Workforce Development in a decision dated April 4, 2024, reference number 03. Because the claimant's separation was not disqualifying, the issues of overpayment, repayment and participation are moot.

DECISION:

The April 9, 2024, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment on March 24, 2024, for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible. The issues of overpayment, repayment, and participation are moot.



Patrick B. Thomas
Administrative Law Judge

May 16, 2024
Decision Dated and Mailed

pbt/scn

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:

**Iowa Employment Appeal Board
6200 Park Avenue 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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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:

**Iowa Employment Appeal Board
6200 Park Avenue 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 se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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.