

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GREGORY S KIRBY
Claimant

TYSON FRESH MEATS INC
Employer

APPEAL 21A-UI-18448-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/23/21
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge from Employment
Iowa Code § 96.5(1) – Voluntary Quit from Employment

STATEMENT OF THE CASE:

On August 20, 2021, claimant Gregory S. Kirby filed an appeal from the August 12, 2021 (reference 01) unemployment insurance decision that denied benefits based on a determination that claimant voluntarily quit his employment. The parties were properly notified of the hearing. A telephonic hearing was held at 2:00 p.m. on Tuesday, October 12, 2021. The claimant, Gregory S. Kirby, participated. Attorney Teri Schmitz represented the claimant. Employer Tyson Fresh Meats, Inc. registered participant Lori Drenzo but she was not available when called and therefore she did not participate in the hearing. Claimant's Exhibit A was received and admitted into the record without objection.

ISSUE:

Did the claimant quit the employment without good cause attributable to the employer or was he discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits?

FINDINGS OF FACT:

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

Claimant was employed full time, most recently as an industrial maintenance technician, from February 3, 2020, until May 19, 2021, when he was discharged.

In late April 2021, claimant reported to work and was showing symptoms of COVID-19. He went and saw the employer's healthcare provider, who instructed him to leave work and stay home. Claimant generally understood that he was allowed to come back to work when he was symptom-free.

Claimant next received a letter dated May 6, 2021, from the employer's third-party leave administrator. (Exhibit A) This letter outlined that claimant was eligible and approved for FMLA-protected leave due to the pandemic. Claimant was not familiar with the third-party administrator or FMLA-protected leave, so after receiving this letter he contacted the employer

to clarify the significance of the letter. Claimant believed he was free to return to work without a doctor's note once his symptoms were gone, provided he returned before May 24, 2021. If he returned on or after May 24, however, claimant needed to provide a doctor's note.

Claimant attempted to return to work on May 19, 2021. When he arrived that morning, his badge did not work and security had to let him in. Security indicated this was not unusual, as claimant had been on a weeks-long period of leave. Claimant next tried to access the break room and his badge did not register at all. He then went to the cashier, who told him that he was no longer an employee. Claimant went to Human Resources, who told him he was no longer employed and he had to leave. When claimant was finally able to successfully reach the union four days later, he learned that the employer was contending he had abandoned his job.

Following claimant's discharge from employment, he received a letter in the mail indicating he needed to provide the employer with a doctor's note if he did not return to work by May 18, 2021. No one had made claimant aware of this changed requirement prior to his discharge. When he had contact with Human Resources on May 19, no employee let him know that he needed to present a doctor's note, or that he had been separated from employment for failing to provide such a note.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit his employment but was discharged for no disqualifying reason. Benefits are allowed.

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. Empl. App. 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 v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

In this case, there is no evidence in the record that claimant voluntarily ended his employment relationship. Therefore, this case will be analyzed as a discharge. The employer bears the burden of establishing 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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.


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 employer did not participate in the hearing or submit any documentation in lieu of testifying. The claimant's testimony indicated he reasonably understood that he was permitted to return at any point without a doctor's note as long as he returned prior to May 24, 2021. It is unclear if the employer discharged claimant for failing to submit a doctor's note in compliance

with its second letter or for another reason. However, what is clear is that the employer has not met its burden of establishing that the claimant was discharged for disqualifying, job-related misconduct. Therefore, benefits are allowed.

DECISION:

The August 12, 2021 (reference 01) unemployment insurance decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Elizabeth A. Johnson
Administrative Law Judge
Unemployment Insurance Appeals Bureau

October 15, 2021
Decision Dated and Mailed

lj/kmj