

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RUTH E SPENCE

Claimant

APPEAL 21A-UI-01917-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC

Employer

OC: 04/05/20

Claimant: Appellant (4)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r, 871-24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the December 21, 2020 (reference 02) unemployment insurance decision that denied unemployment insurance benefits to the claimant based upon a voluntary quitting of work. The parties were properly notified of the hearing. A telephone hearing was held on February 24, 2021. The claimant participated personally. The employer participated through witness Monica Dyar. Claimant's Exhibit A was admitted. Both parties waived due notice of the issues of whether the claimant was able to and available for work under Iowa Code § 96.4(3) and whether the claimant was on an approved leave of absence pursuant to Iowa Admin. Code r. 871-24.23(10). The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Was the claimant able to and available for work?
Was the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a market associate. She began working for this employer on April 28, 2014. When the COVID 19 pandemic occurred, the employer had a lack of work. It offered a furlough to the claimant due to lack of work from April 6, 2020 through July 31, 2020. However, claimant's medical provider had instructed her not to be working with the public due to her age and preexisting health conditions that made her more susceptible to serious complications should she contract COVID 19. See Exhibit A.

The employer notified her that work was available beginning August 1, 2020; however, the claimant's medical provider still advises that she remain off of work due to the COVID 19 pandemic. Claimant's medical provider was unable to provide the employer with a date certain of when the claimant would be able to return to work safely. Claimant's medical provider is still

recommending that the claimant not work due to the COVID 19 pandemic. Claimant forwarded her medical provider's note to the employer and the employer told the claimant they could not extend her voluntary leave of absence past August 24, 2020. Claimant was notified in writing that her employment had been terminated effective August 25, 2020 because she was unable to return back to work.

REASONING AND CONCLUSIONS OF LAW:

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

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 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.

The employer has the burden of proof in establishing disqualifying job-related 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).

In this case, the claimant engaged in no final incident of job-related substantial misconduct that would disqualify her from receiving unemployment insurance benefits. As such, the separation from employment is not disqualifying. However, in order to remain eligible for unemployment insurance benefits funded by the State of Iowa, the claimant must establish that she was able to and available for work.

Iowa Code section 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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. 871-24.23(10) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Iowa Admin. Code r. 871-24.23(41) provides:

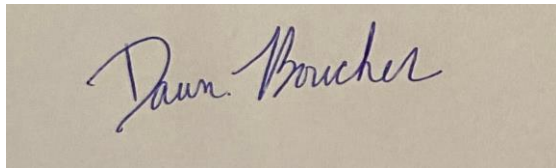
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

In this case, the claimant became temporarily unemployed as of April 5, 2020, but was not available for work the employer that temporarily laid the claimant off because her medical provider had restricted her from working due to the COVID 19 pandemic. She was on a leave of absence until August 25, 2020 when she was discharged. As such, the claimant has not been able to and available for work pursuant to Iowa law. Unemployment insurance benefits are denied effective April 5, 2020 and continuing until the claimant establishes that she is able to and available for work.

DECISION:

The December 21, 2020 (reference 02) unemployment insurance decision is modified in favor of the claimant. Claimant was discharged from employment for no disqualifying reason and the separation from employment is not disqualifying. However, unemployment insurance benefits funded by the State of Iowa are denied as the claimant is not able to and available for work effective April 5, 2020.



Dawn Boucher
Administrative Law Judge

March 4, 2021
Decision Dated and Mailed

db/lj

Note to Claimant

- This decision may determine you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law and if you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance ("PUA") section of the Coronavirus Aid, Relief, and Economic Security Act ("Cares Act") that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**

For additional information on how to apply for PUA go to:
<https://www.iowaworkforcedevelopment.gov/pua-information>.

- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.