

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

INNOCENT EMEDI
Claimant

ALORICA INC
Employer

APPEAL 20A-UI-10346-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/29/20
Claimant: Appellant (5)

Iowa Code section 96.4(3) – Eligibility – Able to and Available for Work
Iowa Code section 96.5(2)a – Discharge for Misconduct

STATEMENT OF THE CASE:

On August 28, 2020, Innocent Emedi (claimant/appellant) filed an appeal from the August 26, 2020 (reference 02) unemployment insurance decision that denied benefits as of March 29, 2020 based on a finding claimant requested and was granted a leave of absence.

A telephone hearing was held on October 12, 2020. The parties were properly notified of the hearing. The claimant participated personally. Alorica Inc (employer/respondent) participated by HR Manager Turkessa Newsome. The parties waived notice on the issue of separation from employment.

Official notice was taken of the administrative record.

ISSUES:

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

Is the claimant able to and available for work? Is 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's first day of employment was October 30, 2017. Claimant was employed by employer as a full-time customer service representative. The last day claimant worked on the job was February 28, 2020. Claimant requested and was granted a leave of absence beginning March 1, 2020 through March 31, 2020. Claimant requested the leave of absence to visit family abroad.

Claimant did not return to work in April due to the pandemic. The country claimant was in had closed the airport on March 23, 2020. He called and informed his team lead, Carol, that he would not be returning as expected. He told her he was not sure when he would be able to come back.

Claimant extended the leave until June 22, 2020. After not hearing from claimant for approximately two months, employer terminated his employment. Claimant had left a number to be reached at. However, employer was unable to reach claimant at the number or through his emergency contact.

Claimant was finally able to return to the U.S. on August 17, 2020. At that time he contacted Newsome but was told he had been terminated due to not returning as scheduled and because employer had not heard from him and was unable to reach him for approximately two months. Newsome told claimant he could re-apply if he wished to.

When claimant returned to the U.S., he returned to his other job at Greystone Manufacturing. Claimant was working 40 hours a week at Greystone and 40 hours a week at employer prior to his leave of absence. He continues to work 40 hours per week at Greystone.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the August 26, 2020 (reference 02) unemployment insurance decision that denied benefits as of March 29, 2020 based on a finding claimant requested and was granted a leave of absence is MODIFIED with no change in effect. The administrative law judge concludes that the claimant's separation from employment was not disqualifying. However, claimant was not available for work from March 1, 2020 and continuing through the benefit week ending August 15, 2020. He was not available for work after that time because he was working full-time for another employer. Benefits are denied.

As an initial matter, the administrative law judge finds claimant did not voluntarily quit but was discharged. Claimant did not indicate he was resigning, nor did he have a choice in whether his employment would continue. As such, the separation must be analyzed as a discharge.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 provides in relevant part:

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).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

Employer has not carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2). Claimant was discharged due to not returning as scheduled and because employer had not heard from him and was unable to reach him for approximately two months. Claimant's failure to return or contact employer does not constitute intentional or substantial misconduct and is therefore not disqualifying.

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 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, 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.

Claimant requested and was granted a leave of absence beginning March 1, 2020 through March 31, 2020. In doing so, claimant made himself unavailable for work during this time. After that time and until he returned to the country on August 17, 2020, claimant was unavailable for work due to being out of the country. Finally, once claimant returned to the country and returned to his full-time position at Greystone, he was working to such an extent as to be unavailable for other employment. For these reasons, claimant was not available for work from March 1, 2020 and continuing to present, and is therefore ineligible for benefit during that time.

While this decision denies regular, state benefits, the evidence indicates claimant may be eligible for federal Pandemic Unemployment Assistance (PUA). Further information on PUA, including how to apply, is set forth below.

DECISION:

The August 26, 2020 (reference 02) unemployment insurance decision that denied benefits as of March 29, 2020 based on a finding claimant requested and was granted a leave of absence is MODIFIED with no change in effect. The administrative law judge concludes that the claimant's separation from employment was not disqualifying. However, claimant was not available for work from March 1, 2020 and continuing through the benefit week ending August 15, 2020. He was not available for work after that time because he was working full-time for another employer. Benefits are denied.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

October 16, 2020
Decision Dated and Mailed

abd/sam

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for regular unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.