

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KELLI L VEST
Claimant

CASEY'S MARKETING COMPANY
Employer

APPEAL NO. 20A-UI-03039-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/08/20
Claimant: Respondent (2/R)

Iowa Code Section 96.5(1) – Voluntary Quit
Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 31, 2020, reference 01, decision that allowed benefits to the claimant provided she met all other eligibility requirements and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on February 29, 2020 for no disqualifying reason. After due notice was issued, a hearing was held on May 6, 2020. Claimant Kelli Vest participated personally and was represented by attorney Tristan Pollard. Michelle Nash represented the employer and presented additional testimony through Jacob Baldwin. The administrative law judge took official notice of the Agency's record of state benefits disbursed to the claimant and received Exhibits 1 and 2 into evidence. The claimant declined to waive formal notice on the issue of whether the claimant was overpaid Federal Pandemic Unemployment Compensation (FPUC).

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment that disqualifies the claimant for unemployment insurance benefits.
Whether the claimant voluntarily quit without good cause attributable to the employer.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Kelli Vest was employed by Casey's Marketing Company during two distinct periods. The most recent employment began in August 2015. Ms. Vest last performed work for Casey's on February 28, 2020. Ms. Vest was a part-time Team Member (kitchen clerk). Blake Homewood, Area Supervisor, was Ms. Vest's supervisor. Ms. Vest also answered to Store Manager Michelle Nash and Assistant Manager Jacob Baldwin. On February 28, 2020, Ms. Vest was scheduled to work from 3:30 a.m. to 10:30 a.m. Ms. Vest was feeling ill, but reported for work on time. Ms. Vest knew the employer was short-staffed. At 3:45 a.m., Mr. Baldwin reported to the workplace to begin his work day. At that time, Ms. Vest told Mr. Baldwin that she was ill, that she was having trouble breathing, and that she was not going to make it to the end of her shift. Mr. Baldwin told Ms. Vest that he hoped she would be able to stay until the next employee arrived. That other employee was scheduled to start at 9:00 a.m. Ms. Vest left work at

7:45 a.m. Before she left, Ms. Vest had on at one other point told Mr. Baldwin that she was having difficulty breathing. Ms. Vest did not notify Mr. Baldwin she was leaving when she left. Mr. Baldwin notified Ms. Nash that Ms. Vest left work early.

The employer has a written attendance policy contained in an employee handbook the employer keeps onsite at the store. The employer provided Ms. Vest access to the policy at the time of hire. Under the written attendance policy, Ms. Vest was required to notify the store manager as soon as possible if she needed to be absent. The policy did not otherwise specify when the notice had to be given. The employer expectation was that if Ms. Vest needed to leave work before the scheduled end of her shift she would speak to a manager and let the manager know when she was leaving. Ms. Vest was at all relevant times aware of the written attendance policy and of the expectation regarding giving notice if she needed to leave work early.

Ms. Vest was next scheduled to work on February 29, 2020, from 3:30 a.m. to 10:30 a.m. Ms. Vest did not appear for the shift or make contact with the employer until 11:30 a.m., an hour after the shift had ended. When Ms. Vest made contact, she told Ms. Nash that she had just gotten out of the hospital. That statement was false. Ms. Vest had up to that point not sought medical evaluation or treatment or her illness. Ms. Nash told Ms. Vest that Ms. Vest had “technically walked out of the shift” the previous day, that Ms. Vest had then been a no-call/no-show on February 29, and that Ms. Vest had “technically left” the employment on February 28. Ms. Vest said, “Okay.” Ms. Nash told Ms. Vest that it was out of her hands, but that she would see if there was anything she could do. Ms. Vest said that she would return her store key and work shirts. Following the conversation with Ms. Vest and Ms. Nash, Ms. Nash contacted Mr. Homewood. Based on Ms. Vest’s false statement that she had been in the hospital and had just been released, Mr. Homewood directed Ms. Nash to contact Ms. Vest and to tell Ms. Vest that she could return to the employment if she provided a doctor’s excuse.

On March 1, 2020, Ms. Nash called Ms. Vest’s number and left a voicemail message in which she stated that if Ms. Vest brought a doctor’s note, things would be fine, meaning that Ms. Vest could continue in the employment. Ms. Vest asserts she did not receive the message. Ms. Vest further asserts that she went to urgent care on March 1 and was diagnosed with the flu and bronchitis.

Ms. Nash waited a week for Ms. Vest to provide a medical note regarding her absences on February 28 and 29, 2020, but Ms. Vest did not provide a note. Several days after Ms. Vest and Ms. Nash had last spoken by telephone, Ms. Vest returned her key and her work shirts to the workplace at a time when Ms. Nash was not there. Ms. Vest also left a note stating that she thought things would have turned out differently if Ms. Nash had been working on the morning of February 28, 2020. While Ms. Vest was at the workplace that day, she spoke to a coworker who said he thought Ms. Vest would be returning to the employment and that Blake, the Area Supervisor, had said all Ms. Vest needed to do was provide a doctor’s note. Ms. Vest did not follow up with Ms. Nash or Mr. Homewood.

Ms. Vest established a claim for unemployment insurance benefits that was effective March 8, 2020 and received \$1,888.00 in regular state benefits for the eight weeks between March 8, 2020 and May 2, 2020. Casey’s is the sole base period employer for purposes of the claim.

REASONING AND CONCLUSIONS OF LAW:

A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, or failure to pass a probationary period. Iowa Administrative Code rule 871-24.1(113)(c). A quit is a

separation initiated by the employee. Iowa Administrative Code rule 871-24.1(113)(b). In general, a voluntary quit requires evidence of an intention to sever the employment relationship and an overt act carrying out that intention. See *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 698, 612 (Iowa 1980) and *Peck v. EAB*, 492 N.W.2d 438 (Iowa App. 1992). In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer. See Iowa Administrative Code rule 871-24.25.

The weight of the evidence establishes a voluntary quit, rather than a discharge. It was Ms. Vest's behavior on February 28 and 29 that brought matters to the point of a discussion about whether Ms. Vest would be returning to the employment. Ms. Vest elected to leave midway through her shift on February 28 without telling Mr. Baldwin that she was leaving at that time. Ms. Vest concedes she knew she was supposed to tell Mr. Baldwin she was leaving. Ms. Vest's statement to Mr. Baldwin toward the start of the shift that she did not think she would make it to the end of the shift did not satisfy the requirement that she give notice before she departed. Ms. Vest knew that. Ms. Vest then was absent on February 29 and elected not to give notice to the employer. Absences related to illness are considered excused, provided the employee has complied with the employer's policy regarding notifying the employer of the absence. See *Higgins v. Iowa Department of Job Service*, 350 N.W.2d 187 (Iowa 1984). Ms. Vest did not comply on February 28 or 29. When Ms. Vest made late contact with Ms. Nash on February 29, Ms. Nash did not tell Ms. Vest she was discharged. Rather, Ms. Nash told Ms. Vest that Ms. Vest had "technically" left the employment the previous day, but in the same breath Ms. Nash told Ms. Vest she would see if anything could be done. The employer did not communicate a discharge on February 29. It is important to note that Ms. Vest was intentionally dishonest with Ms. Nash on February 29 by telling Ms. Nash she had just been released from the hospital. Ms. Vest concedes she should not have said that and testified that she did not seek medical evaluation until two days after the February 29 contact with Ms. Nash. It is also worth noting the conspicuous omission of medical documentation to support Ms. Vest's assertion that she ever sought medical evaluation or treatment in the general time frame of her employment coming to an end. The employer relied on Ms. Vest's dishonest assertion that she had been in the hospital and communicated a willingness to move past the unexcused absences upon presentation of medical documentation of the hospitalization. The weight of the evidence strongly suggests that Ms. Vest did in fact receive Ms. Nash's voicemail message, but realized she would be unable to provide documentation to support her dishonest statement that she had been hospitalized. When Ms. Vest returned to the store with her key and shirts, a coworker specifically stated to Ms. Vest that Mr. Homewood had decided Ms. Vest could continue in the employment with presentation of medical documentation. Ms. Vest elected not to follow up.

Iowa Code section 96.5(1) provides:

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

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.

Ms. Vest's voluntary quit was without good cause attributable to the employer. Ms. Vest's election to forego a return to the employment rather than confessing her earlier dishonesty did not provide good cause attributable to the employer. Ms. Vest is disqualified for benefits until she has worked and been paid wages for insured work equal to 10 times her weekly benefit

amount. Ms. Vest must meet all other eligibility requirements. The employer's account shall not be charged for benefits for the period beginning May 3, 2020.

Even if the administrative law judge had concluded that Ms. Vest was discharged from the employment, the evidence would establish a discharge for misconduct in connection with the employment based on the circumstances of the February 29 unexcused absence.

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(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).

While a disqualifying discharge for attendance usually requires excessive unexcused absences, a single unexcused absence may in some instances constitute misconduct in connection with the employment that would disqualify a claimant for benefits. See *Sallis v. Employment Appeal Board*, 437 N.W.2d 895 (Iowa 1989). In *Sallis*, the Supreme Court of Iowa set forth factors to be considered in determining whether an employee's single unexcused absence would constitute disqualifying misconduct. The factors include the nature of the employee's work, dishonesty or falsification by the employee in regard to the unexcused absence, and whether the employee made any attempt to notify the employer of their absence. In this instance, Ms. Vest knew the employer was short-staffed, elected to provide no notice of her need to be absent on February 29, and then was intentionally dishonest with the employer when she made contact

after the shift had ended. Ms. Vest's actions demonstrated an intentional and substantial disregard of the employer's interests.

The unemployment insurance law requires benefits be recovered from a claimant who receives benefits and is later denied benefits even if the claimant acted in good faith and was not at fault. However, a claimant will not have to repay an overpayment when an initial decision to award benefits on an employment separation issue is reversed on appeal if two conditions are met: (1) the claimant did not receive the benefits due to fraud or willful misrepresentation, and (2) the employer failed to participate in the initial proceeding that awarded benefits. In addition, if a claimant is not required to repay an overpayment because the base period employer failed to participate in the initial proceeding, the base period employer will be charged for the overpaid benefits. Iowa Code § 96.3(7)(a) and (b).

Because the materials from the March 23, 2020 fact-finding interview were not available for the administrative law judge's consideration at the time of the appeal hearing, the matter of deciding the state benefits overpayment amount and whether the overpaid benefits should be recovered from the claimant or charged to the employer under Iowa Code § 96.3(7)(b) is remanded to the Benefits Bureau. The remand shall also address overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits.

DECISION:

The March 31, 2020, reference 01, decision is reversed. The claimant voluntarily quit the employment without good cause attributable to the employer. The quit was effective March 1, 2020. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. In the alternative, the claimant was discharged for misconduct connection with the employment based on dishonesty in connection with an unexcused absence. The claimant must meet all other eligibility requirements. The employer's account shall not be charged for benefits for the period beginning May 3, 2020.

The matter of deciding the state benefits overpayment amount and whether the overpaid benefits should be recovered from the claimant or charged to the employer under Iowa Code § 96.3(7)(b) is remanded to the Benefits Bureau. The remand shall also address overpayment of Federal Pandemic Unemployment Compensation (FPUC) benefits.



James E. Timberland
Administrative Law Judge

May 11, 2020
Decision Dated and Mailed

jet/scn