

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PATRICIA J HAIGH
Claimant

NORDSTROM INC
Employer

APPEAL 21A-UI-22740-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/04/21
Claimant: Appellant (2R)

Iowa Code §96.5(2)a-Discharge/Misconduct
Iowa Code §96.5(1)- Voluntary Quit
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

On October 11, 2021, the appellant/claimant filed an appeal from the June 23, 2021, (reference 01) unemployment insurance decision that denied benefits based on claimant voluntarily quitting. The parties were properly notified about the hearing. A telephone hearing was held on December 7, 2021. The hearing was held together with appeals 21A-UI-22742-CS-T; 21A-UI-22745-CS-T; 21A-UI-22746-CS-T; 21A-UI-22747-CS-T; 21A-UI-22748-CS-T; 21A-UI-22749-CS-T; 21A-UI-22750-CS-T and 21A-UI-22751-CS-T, and combined into one record. Claimant participated at the hearing. Employer did not call in to participate. Administrative notice was taken of claimant's unemployment insurance benefits records.

ISSUES:

Is claimant's appeal timely?

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The unemployment insurance decision was mailed to the appellant's address of record on June 23, 2021. The appellant did not receive the decision. The first notice of disqualification was the overpayment decisions dated October 1, 2021. The appeal was sent within ten days after receipt of those decisions.

Claimant began working for employer on October 27, 2011. Claimant last worked as a part-time processor. Claimant was separated from employment on July 15, 2020.

Claimant last physically worked for the employer on March 31, 2020. The employer was shut down due to the COVID 19 pandemic until May 12, 2020. On May 12, 2020, the employer asked claimant to return to work. The claimant informed the employer that she did not feel comfortable

returning to the store because she was considered high risk due to her age. Claimant's husband was also high risk due to his age and he had recently had a stomach surgery that made him high risk. Additionally claimant's husband had sepsis and he was recovering from that illness. Claimant did not want to return to work at that time due to the risk of being exposed to COVID. The employer agreed claimant did not have to return at that time and told her they would get in contact with her again. On or about July 15, 2020, the employer contacted claimant and asked claimant if she wanted to return to work. Claimant again responded that she did not feel comfortable returning to work due the risk of being exposed to COVID. The employer told claimant that they were not sure what to do with her so they were going to need to terminate her. Claimant was terminated on July 15, 2020.

The issue of whether claimant is able to work and available for work beginning July 15, 2020, has not been determined.

The issue of whether claimant was on a leave of absence beginning on May 12, 2020, and whether she is able to work and available for work has not been determined.

Claimant has applied for Pandemic Unemployment Assistance. Claimant has not received a decision informing her of whether she is approved for benefits.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the appellant's appeal is timely. The administrative law judge determines it is.

Iowa Code section 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law

judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The appellant did not have an opportunity to appeal the fact-finder's decision because the decision was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant timely appealed the overpayment decision, which was the first notice of disqualification. Therefore, the appeal shall be accepted as timely.

The next issue is whether the claimant's separation was a voluntarily quit or whether it was a discharge. For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

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 provides:

Causes for disqualification.

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. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

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.

Misconduct “must be substantial” to justify the denial of unemployment benefits. *Lee*, 616 N.W.2d at 665 (citation omitted). “Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits.” *Id.* (citation omitted). ...the definition of misconduct requires more than a “disregard” it requires a “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.” Iowa Admin. Code r. 871–24.32(1)(a) (emphasis added).

While the employer has the burden to establish the separation was a voluntary quitting of employment rather than a discharge, claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2).

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989); see *also* Iowa Admin. Code r. 871-24.25(35). A voluntary leaving of employment 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).

The claimant testified the employer contacted claimant to see if she would come back to work. The claimant expressed her concern about COVID and informed the employer that she did not feel comfortable returning to work at this time. The employer informed claimant that she was terminated since she would not return to work. 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). In this case the employer was not present at the hearing to present evidence establishing job-related misconduct. There is no report, statement, or testimony establishing any misconduct. As a result, benefits are granted, provided the claimant is otherwise eligible.

DECISION:

Claimant's appeal is timely.

The June 23, 2021, (reference 01) decision is REVERSED. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

REMAND:

The issue of whether claimant was on a leave of absence beginning May 12, 2020, and whether claimant was able to work and available for work beginning May 12, 2020, is remanded to the Benefits Bureau for an initial determination and investigation.

The issue of whether claimant is able to work and available for work beginning July 15, 2020, is remanded to the Benefits Bureau for an initial determination and investigation.



Carly Smith
Administrative Law Judge
Unemployment Insurance Appeals Bureau

January 10, 2022
Decision Dated and Mailed

cs/mh