

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**PATRICIA A REICH**  
Claimant

**THEISENS INC**  
Employer

**APPEAL 20A-UI-05300-BH-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/20/20**  
**Claimant: Appellant (2)**

Iowa Code section 96.4(3) – Able and Available Iowa Admin. Code r. 871-24.23(26) – Able & Available – Availability Disqualifications  
Iowa Administrative Code rule 871-24.23(10) – Voluntary Leave of Absence  
Iowa Code section 96.5(1) – Voluntary Quit  
Iowa Administrative Code rule 871-24.25 – Voluntary Quit Without Good Cause  
Iowa Administrative Code rule 871-24.26 – Voluntary Quit With Good Cause  
Iowa Code section 96.5(2)(a) – Discharge for Misconduct Iowa Administrative Code rule 871-24.32 – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant, Patricia A. Reich, appealed the May 28, 2020 (reference 01) unemployment insurance decision that denied benefits based upon a finding Reich was on a leave of absence from the employer, Theisens, Inc. (Theisens), and not available for work. The agency properly notified the parties of the hearing. The undersigned presided over a telephone hearing on July 7, 2020. Reich participated and testified. Claimant's Exhibit A, a letter from Reich's personal physician, Dr. Powers, was admitted into evidence. Theisens participated through Heidi Lingle, who testified.

**ISSUE:**

Is Reich able to and available for work?

Is Reich on an approved leave of absence?

Was Reich's separation from employment with Theisens a layoff, discharge for misconduct, or voluntary quit without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the undersigned finds the following facts.

Theisens hired Reich on August 31, 2011. She worked part time as a sales associate. Her supervisors were Mitch Klepper, store manager, and Amanda Johll, assistant store manager.

Reich liked her job. She enjoyed the interaction with customers. Reich also liked the physical activity her job demanded.

Reich is over 65 years of age. She had concerns about contracting COVID-19. Reich did research that included going to the United States Centers for Disease Control and Prevention (CDC) website, calling a nursing hotline, and speaking with her personal physician, Dr. Powers. The information she gathered all supported the conclusion that she should not be working at Theisens, where she interacted face to face with multiple members of the public each shift, because she was at a heightened risk of severe health complications and death if she contracted COVID-19.

Theisens allowed employees to go on a leave of absence due to COVID-19. An employee could take a 30-day leave of absence and request one extension of the employee's leave of absence. Reich requested a leave of absence and Theisens approved it. She began a leave of absence on March 19, 2020. Theisens extended Reich's leave of absence until May 21, 2020. Johll, one of Reich's supervisors, informed her on two occasions that Theisens would discharge her at the end of the leave of absence if she did not return to work.

Reich did not want to lose her job with Theisens. During the COVID-19 pandemic, Reich leaves her home only one time per week, to go to the grocery store. She finds the need to self-quarantine for her safety frustrating because she wants to be active.

Before Reich's leave of absence had ended, Johll telephoned her. Reich had no intention of quitting her job with Theisens. She did not inform anyone at Theisens that she was quitting or resigning. Instead, she refused to return to work because of the risk COVID-19 poses to her life and its ongoing presence in communities across our state and nation. After the call, Reich believed Theisens had discharged her from employment. Theisens ended Reich's employment on May 18, 2020, and categorized her separation as a resignation even though Reich did not intend to quit and took no action carrying out such an intent.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the undersigned concludes:

- 1) Reich went on a voluntary leave of absence from March 19, 2020, through May 17, 2020, during which she was not available for work and is therefore not eligible for benefits.
- 2) Theisens discharged Reich on May 18, 2020, for a non-disqualifying reason, which means she is entitled to benefits beginning on that date, provided she otherwise eligible.

Iowa Administrative Code rules 871-24.23(10) states that a claimant is disqualified from benefits for being unavailable for work if the claimant requested and was granted a leave of absence. Under the rule, the leave is deemed to be a period of voluntary unemployment. The claimant has the burden of proof in establishing her ability and availability for work. See *Davoren v. Iowa Employment Security Comm'm*, 277 N.W.2d 602 (Iowa 1979).

Here, Reich exercised her right to a leave of absence due to COVID-19. Theisens granted her a leave of absence beginning March 19, 2020. Theisens ended Reich's employment with it on May 18, 2020. Thus, Reich was on a leave of absence from March 19, 2020, through May 18, 2020, that constitutes a period of voluntary unemployment under the law. She is therefore not eligible for benefits because she was not available for work from March 19, 2020, through May 18, 2020.

Reich's employment with Theisens ended on May 18, 2020. The separation ended Reich's voluntary unemployment due to the leave of absence. Theisens has categorized the separation as a quit. Reich believed she was discharged.

Under Iowa Code section 96.5(1), a claimant is not eligible for benefits if the claimant quit employment without good cause attributable to the employer. In order for a quit to have occurred under section 96.5(1), the claimant must have:

- 1) Intended to quit his job; and
- 2) Taken action carrying out that intent. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

Reich testified credibly she did not intend to quit her job with Theisens. Further, she took no action carrying out such an intent. All she wanted was a longer leave of absence so that she did not risk serious illness and death from COVID-19 by working. The evidence therefore establishes Reich did not quit her job even though Theisens categorized the separation as a resignation. Rather, Theisens ended the employment relationship. It did so by discharging Reich and categorized the separation as a resignation for its internal purposes, as is an employer's right.

Because Theisens ended its employment relationship with Reich by discharging her, the analysis shifts to whether it did so for job-related misconduct. Iowa Code section 96.5(2)(a), an individual is disqualified for benefits if the employer discharges the individual for misconduct in connection with the individual's employment. The statute does not define "misconduct," but Iowa Administrative Code rule 24.32(1)(a) does:

"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.

The Iowa Supreme Court has ruled this definition accurately reflects the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

Here, there is no evidence to support the conclusion Reich engaged in misconduct. She merely followed expert medical advice on whether she should return to her job with COVID-19 still spreading in the community and requested a longer leave of absence. While it is perfectly reasonable for Theisens to elect to discharge Reich because it cannot keep a position open for her indefinitely, that reason does not disqualify Reich from entitlement to regular unemployment insurance benefits under state law.

**DECISION:**

The May 28, 2020, (reference 01) unemployment insurance decision is affirmed in part and reversed in part.

Reich is not eligible for benefits during her voluntary unemployment while on a leave of absence from March 19, 2020, through May 17, 2020, because she was not available for work.

Beginning on May 18, 2020, Reich is entitled to benefits because Theisens discharged her for non-disqualifying reasons, provided she is otherwise eligible under the law.



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Ben Humphrey  
Administrative Law Judge

July 17, 2020  
Decision Dated and Mailed

bh/sam