

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**AARON M ALLEN**  
Claimant

**APPEAL 20A-UI-03712-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVENTURE LANDS OF AMERICA INC**  
Employer

**OC: 03/15/20**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5-2-a – Discharge for Misconduct  
Iowa Code § 96.5-1 - Voluntary Quit  
Iowa Code § 96.3-7 – Overpayment  
PL 116-136 Section 2104 (B) – Federal Pandemic Unemployment Compensation  
871 IAC 24.10 – Employer Participation in the Fact-Finding Interview

**STATEMENT OF THE CASE:**

Adventure Lands of America (employer) appealed a representative's April 28, 2020, decision (reference 01) that concluded Aaron Allen (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 22, 2020. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated by Scott James, Executive Chef, and Daniel Richards, Hourly Supervisor.

The employer offered and Exhibits One and Two were received into evidence. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issues include whether the claimant was separated from employment for any disqualifying reason, whether the claimant was overpaid benefits, which party should be charged for those benefits, and whether the claimant is eligible for Federal Pandemic Unemployment Compensation.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 3, 2019, as a full-time cook. He acknowledged the employer's online handbook on June 3, 2019. The policy states in part, "Unsatisfactory attendance, reporting late, leaving early, or failure to call in may be cause for disciplinary action and discharge. A supervisor or manager in your department may require a doctor's note and/or release form before returning to work. Failure to call in or report to work for two or more days will be considered a voluntary quit with no notice." The policy does not indicate a proper call in time or method. It does not indicate how many absences would

constitute termination. The employer did not give the claimant any warnings for attendance during his employment.

On March 11 and 12, 2020, the claimant properly reported his absence due to illness. On March 13, 2020, the claimant returned to work with a doctor's note excusing his absences on March 11 and 12, 2020. The claimant worked a while and then told the employer he had stomach issues and needed to go to the hospital. The claimant left work during his shift on March 13, 2020. He said he would keep the employer updated.

On March 14 and 15, 2020, the claimant did not appear for work or notify the employer of his absence. On or about March 14, 2020, someone showed the employer a cellphone that had the claimant's Facebook page. There was a post from the claimant indicating he had a motorcycle license. The employer was not sure if the claimant received the license in the mail or left his home to get the license. The employer assumed the claimant was active and not sick on March 14, 2020. At the end of the claimant's shift, 3:00 p.m. on March 15, 2020, the employer decided the claimant had quit work.

On March 15, 2020, at 7:00 p.m. the claimant sent a text to the employer asking why people were talking about him not having a job. The claimant said, "I told you I have a dr. note". The claimant asked if he had a job. The employer responded that there was no contact for two shifts and the claimant did not notify the employer of the absence.

The claimant filed for unemployment insurance benefits with an effective date of March 15, 2019. The employer provided the name and number of Scott James as the person who would participate in the fact-finding interview on April 13, 2020. The fact-finding notice was sent to the employer with an incorrect telephone number for the employer. On April 9, 2020, the employer notified the department of the incorrect number. The department confirmed that it had corrected the number. The fact finder called the corrected number and left a voice message with the fact finder's name, number, and the employer's appeal rights. Approximately thirty minutes after the interview, the employer notified the department that it did not get a call. The employer did not receive a call from the fact-finder.

The claimant's weekly benefit amount was determined to be \$352.00. The claimant received benefits of \$352.00 per week from March 15, 2020, to the week ending May 16, 2020. This is a total of \$3,168.00 in state unemployment insurance benefits after the separation from employment. He also received \$4,200.00 in federal pandemic unemployment compensation for the seven-week period ending May 16, 2020.

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

For the reasons that follow the administrative law judge concludes the claimant did not voluntarily quit work.

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.

Iowa Admin. Code r. 871-24.25(4) provides:

Voluntary quit without good cause. 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 from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

Iowa law indicates that if the worker is absent for three days without notice **and** the employer has a rule that says three days of absent without report is a voluntary quit, **then** the claimant is deemed to have voluntarily quit work. In this case the claimant was absent for two days. The employer has a rule that says two days of absence without report is a voluntary quit. Iowa law does not indicate that this is a voluntary quit.

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's text shows that he had no intention of quitting. The separation must be analyzed as an involuntarily separation.

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(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.

Iowa Admin. Code r. 871-24.32(7) provides:

(7) Excessive unexcused absenteeism. Excessive unexcused absenteeism is an intentional disregard of the duty owed by the claimant to the employer and shall be

considered misconduct except for illness or other reasonable grounds for which the employee was absent and that were properly reported to the employer.

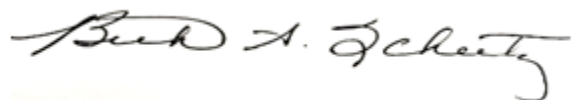
The employer has the burden of proof in establishing disqualifying job misconduct. Excessive absences are not misconduct unless unexcused. Absences due to properly reported illness can never constitute job misconduct since they are not volitional. Cosper v. Iowa Department of Job Service, 321 N.W.2d 6 (Iowa 1982). The employer must establish not only misconduct but that there was a final incident of misconduct which precipitated the discharge. The last incidents of absence were March 14 and 15, 2020. The employer knew the claimant was sick and going to the hospital.

When the employer did not hear from the claimant, it did not do a welfare check. The next time it heard from the claimant was on the evening of March 15, 2020. The employer terminated the claimant without any inquires. The claimant's text indicates he had a doctor's note and would bring it to the employer. Clearly, the absences were due to a medical issue and improperly reported.

The last question is whether the claimant's two improperly reported absences for medical issues were excessive. An employer may discharge an employee for any number of reasons or no reason at all, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, the employer incurs potential liability for unemployment insurance benefits related to that separation. Inasmuch as the employer had not previously warned the claimant about any of the issues leading to the separation, it has not met the burden of proof to establish the claimant acted deliberately or negligently in violation of company policy, procedure, or prior warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer did not provide sufficient evidence of job-related misconduct. It did not meet its burden of proof to show misconduct. Benefits are allowed provided the claimant is otherwise eligible.

**DECISION:**

The representative's April 28, 2020, decision (reference 01) is affirmed. The claimant was discharged. Misconduct has not been established. Benefits are allowed provided the claimant is otherwise eligible.



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Beth A. Scheetz  
Administrative Law Judge

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May 27, 2020  
Decision Dated and Mailed

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