

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

APRIL M FRICKSON
Claimant

NORDSTROM INC
Employer

APPEAL 22A-UI-06466-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/13/22
Claimant: Appellant (4)

Iowa Code § 96.5(1) - Voluntary Quit
Iowa Code § 96.5(2)a - Discharge for Misconduct
Iowa Code § 96.4(3) - Able and Available to Work
Iowa Admin. Code r. 871-24.32(1)a - Discharge for Misconduct
Iowa Admin. Code r. 871-24.23(1) - Eligibility - A&A - Illness

STATEMENT OF THE CASE:

Claimant, April Frickson, filed an appeal from the February 28, 2022, (reference 01) unemployment insurance decision that denied benefits based upon finding the February 21, 2022 separation was a discharge for misconduct for failing to follow instructions in the performance of the job. The parties were properly notified of the hearing. A telephone hearing was held on April 22, 2022. Claimant personally participated. Employer, Nordstrom, Inc, failed to participate. Judicial notice was taken of the administrative file.

ISSUE:

Was the separation a layoff, discharge for misconduct or voluntary quit without good cause?
Is claimant able and available for work?

FINDINGS OF FACT:

Having heard the testimony and reviewed evidence in the record, the administrative law judge finds that claimant was employed full-time with a set schedule as a picker. Her first day of work was in November 2021. Her last day worked was January 17, 2022. Claimant received an email from the employer on February 19, 2022, stating the employer was trying to get in touch and if they did not hear from her that she would be terminated as of February 14, 2022. Claimant then received an email from her employer on February 20, 2022, stating that since they did not hear from her, they were accepting her resignation.

On January 17, 2022, her husband and daughter tested positive for COVID-19. Claimant had all the symptoms, including loss of smell and taste, but tested negative. The doctor told her she must be early in her COVID but had COVID and she also had the flu.

Claimant felt too ill to work for five days, the majority of the week of January 16-22, 2022. Claimant self-reported her COVID through her employer's portal to the COVID team. At first, the employer

told her she had to stay home for 10 days. Claimant was calling into work everyday to report that she would not be coming into work and did so from January 17 - 31, 2022. Claimant took an at home test on January 22 or 23, 2022 and it was positive. The employer, through a different member of the COVID team told claimant she had to stay home for 14 days on January 27, 2022.

Employer then told her she had to stay home until she tested negative. Claimant advised employer that the doctor told her since she has COVID, she will test positive for some time and gave her a note that said she could return to work as of January 28, 2022. Finally, employer told her that the employer needed a doctor's note, which claimant sent the doctor's note saying she can return as of January 27, 2021. The COVID team says great, we will let someone in your management know. Claimant's calling, her management team has no information. COVID team told the top manager on the week of their vacation, so the assistant manager (who was unaware of doctor's note) and sent the email about termination. When the manager, who had been informed by the COVID team returned, she sent the email about her resignation being accepted. Claimant did not resign. Claimant did not call on some days because the COVID team said they would be in touch when she supplied the doctor's note. Claimant did not resign and had no intention to resign.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979). 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). 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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning.

Employer failed to meet their burden of proof. Employer did not participate in the hearing nor offered any exhibits. No acts of misconduct were proven. While employer may have had a good reason to discharge claimant, without any proof, it was not a disqualifying reason. Accordingly, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed.

The next issue is whether claimant is able and available to work. For the reasons that follow, the administrative law judge concludes claimant was not able to and available to work due to illness for the week ending January 22, 2022.

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(1) provides:


Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

- (1) An individual who is ill and presently not able to perform work due to illness.

Claimant was ill for five days during the week of January 16-22, 2022. This disqualifies her for benefits for the week ending January 22, 2022.

DECISION:

The February 28, 2022, (reference 01) unemployment insurance decision is **MODIFIED** in favor of appellant by reversing the decision, but disqualifying claimant for one week. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid. Claimant is **DISQUALIFIED** for benefits for the benefit week ending January 22, 2022, since she was ill for the majority of that week.



Darrin T. Hamilton
Administrative Law Judge

May 5, 2022
Decision Dated and Mailed

dh/mh