

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRANDY CONRAD
Claimant

**AMERICAN BAPTIST HOMES OF THE
MIDWEST**
Employer

APPEAL NO. 23A-UI-07612-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/31/23
Claimant: Appellant (1)

Iowa Code § 96.5-1 – Voluntary Quit
Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 1, 2023, (reference 06) which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on August 22, 2023. Claimant participated. Employer participated by Katie Hansen.

ISSUE:

Whether claimant quit for good cause attributable to employer.

Whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on June 19, 2023. Claimant left work in the middle of her shift without notifying and getting approval from her supervisor when she left. She left to pick up a child hours before her shift was to be over. Later that day, claimant put in for a PTO time off for the next day. That time off was not approved because of staffing concerns.

Claimant did not come into work on June 20, 2023. Her supervisor texted her asking if she was coming in shortly after her shift was to start. Claimant did not respond back until that evening stating she had a migraine. On June 21, 2023 claimant again was a no call / no show for work. Her supervisor once again tried to text claimant to find out if she was coming in. Claimant did not return this text at all.

On June 22, 2023 claimant once again did not show up for work. Employer stated that once again they tried to contact claimant at the time for her shift to start and there was no response. Claimant stated that she had no need to come in as she had no one on her schedule for the day. Employer's representative stated that this is not how things are to work with showing up for work.

Claimant was terminated for abandoning her work on June 19, 2023 followed by three days of no call / no show absences for work.

At the time of hire, claimant received an employee handbook detailing steps to be followed if someone is sick and needs to call off from work. Claimant stated that she did not read it.

REASONING AND CONCLUSIONS OF LAW:

This matter could either be looked at as a termination by the employer because claimant stopped showing up for work and didn't call off in violation of company policies, or as a voluntary quit as claimant was a no call / no show for work for three days. As claimant did attempt to return to work after the days off and employer had some contact with claimant while she was away from work, the matter will be examined as a termination rather than as a three day voluntary quit.

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.

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer

has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

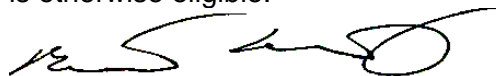
It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, Id. In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, Id. The administrative law judge does not believe that the claimant did not need to go into work if she was not listed as having an item on her schedule. Claimant was not convincing in her testimony, and she seemed unsure as to the specific procedures to be followed. Additionally, claimant was not believable in regards to her claim that days off did not need to be approved.

In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning calling off absences. Claimant not only left work in the middle of her shift on June 19, but did not return a text from her supervisor until many hours later on June 20; and did not return a text at all on June 21 or 22, 2023.

The last incident, which brought about the discharge, constitutes misconduct because claimant received an employee handbook detailing steps to be followed to call off from work when sick. The fact that she chose not to read it is irrelevant. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated August 1, 2023, (reference 06) is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



Blair Bennett | Administrative Law Judge II
Iowa Department of Inspections & Appeals

08/23/23
Decision Dated and Mailed

BAB/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. *There is no filing fee to file an appeal with the Employment Appeal Board.*

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may file a petition for judicial review in district court.

2. If you do not file an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.