

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JODY M TUCKER
Claimant

DOLGENCORP LLC
Employer

APPEAL 22A-UI-03549-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/12/21
Claimant: Appellant (4)**

Iowa Code § 96.5(1) - Voluntary Quit
Iowa Code § 96.5(2)a - Discharge for Misconduct
Iowa Code § 96.4(3) - Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) - Eligibility - A&A - Leave of absence
Iowa Admin. Code r. 871-24.22(2)j(2) - Leave of Absence - Voluntary Quit

STATEMENT OF THE CASE:

Claimant/Appellant, Jody Tucker, filed an appeal from the January 19, 2022, (reference 02) unemployment insurance decision denying benefits as of 12/12/21, finding claimant requested and was granted a leave of absence and was therefore voluntarily unemployed. The parties were properly notified of the hearing. A telephone hearing was held on April 26, 2022. Claimant personally participated. Employer did not participate. Judicial notice was taken of the administrative record.

ISSUES:

Is claimant able to and available for work?
Is claimant on an approved leave of absence?
Was the separation a layoff, discharge for misconduct or a voluntary quit without good cause?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time as a manager, with a varied schedule. His first day of work was sometime in March 2002. Her last day worked was January 5, 2021. Claimant started an approved leave of absence on January 6, 2021. Her leave of absence was scheduled to expire on October 20, 2021. The leave of absence was related to a work-related injury that required a second surgery that happened on January 6, 2021.

Claimant was released to go back to work sometime in August 2021 and claimant sent the paperwork to her employer. Her release had a restriction of not lifting more than 20-25 pounds. Her position required her to lift 50 pounds. She was not hearing from her employer and was calling to find out whether she could return to work. She was finally advised to reach out to her district manager, whom she thought the name was Lee Frazier. Claimant talked with Mr. Frazier sometime in November 2021. He asked her if she could lift 50 pounds and claimant referred him

to her doctor's release that she is restricted to no more than 20-25 pounds. Mr. Frazier told her that he would be back in touch with her. Claimant did not hear back from Mr. Frazier, finally getting ahold of him in January 2022 and was told she did not have a job there anymore. She has since learned that Mr. Frazier is no longer with employer. Claimant did not receive any communication from employer, and she did not quit, but was ready and able to go to work, with the weight restriction, as of sometime in August 2021.

Claimant filed for unemployment with a claim date of December 12, 2021. She has received benefits for an eleven-week period for benefit weeks ending starting February 12, 2022, through April 23, 2022.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not able to and available for work from January 6, 2021, through sometime in August 2021, as she was on an approved leave of absence.

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(10) provides:

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

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Claimant was on an approved leave of absence starting January 6, 2021. The leave of absence ended when she was released to return to work sometime in August 2021 and communicated that with her employer. Benefits are therefore denied for benefit weeks ending January 9, 2021, through the benefit week ending sometime in August 2021. Since claimant did not file for, nor receive benefits for any of these weeks, the exact date is moot.

The next issue regards claimant's separation from employment and for the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

Iowa Admin. Code r. 871-24.22(2)(2) provides:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Claimant was a leave of absence. Prior to the leave of absence coming to an end, claimant submitted a release for return to work, with weight restrictions. As reflected above, she did not hear from her employer from August of 2021 until sometime in November 2021, when she talked with Mr. Frazier, who advised that he would be back in touch when informed of the weight restriction. Claimant tracked Mr. Frazier down in January of 2022 since she had not heard from him, only to be advised she no longer had a job. She was not advised when she was let go from work, why she was let go from work, nor received any communication regarding the matter. Since claimant was released to go back to work prior to the end of the leave period and there was no communication from employer to claimant, claimant did not quit by failing to return to work, as she was able to and willing to return to work in August 2021. Employer did not bring her back to work.

Since there is not a quit, is there misconduct?

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 offer any evidence in this appeal. While employer may have had a good reason to discharge claimant, there was no disqualifying reason proven. Accordingly, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed.

DECISION:

The January 19, 2022, (reference 02) unemployment insurance decision is **MODIFIED** in favor of appellant. The finding that claimant was on a leave of absence and denied benefits as of December 12, 2021, is modified to claimant's leave of absence was from January 6, 2021, through sometime in August 2021 and benefits are denied for benefit weeks ending January 9, 2021, through the benefit week ending sometime in August 2021, with the exact date being moot since claimant did not file for, nor receive benefits for any of these weeks. Furthermore, claimant's separation was a discharge for no disqualifying reason that happened sometime in window of November 2021 - January 2022, with the exact date being moot since claimant's first claim for benefits happened for the benefit week ending February 12, 2022.



Darrin T. Hamilton
Administrative Law Judge

May 5, 2022

Decision Dated and Mailed

dh/ac