

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TIFFANY A LAWYER
Claimant

ANNETT HOLDINGS INC
Employer

APPEAL 20A-UI-08710-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05/24/20
Claimant: Appellant (4)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

Claimant filed an appeal from the July 20, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on September 9, 2020, at 10:00 a.m. Claimant participated. Employer participated through Peggy Brees, Manager, and Julie Underwood, Human Resources Generalist. Claimant's Exhibits A and B were admitted. Employer's Exhibit 1 was admitted.

ISSUES:

Whether claimant's separation was a discharge for disqualifying job-related misconduct or a voluntary quit without good cause attributable to employer.
Whether claimant is able to and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began her employment as a full-time Data Entry Specialist with Annett Holdings on June 27, 2017. Claimant had surgery on April 28, 2020 for a non-work-related injury. Claimant was on an approved medical leave of absence following her surgery; claimant's medical leave expired May 26, 2020.

On May 22, 2020, claimant's physician released claimant to return to work starting June 4, 2020. Claimant provided employer with a copy of the physician's note. On May 22, 2020, employer notified claimant that her employment would be terminated because she was not released to return to work prior to the expiration of her leave. On May 26, 2020, claimant reported to work against her physician's advice in an effort to preserve her employment. Employer sent claimant home where she worked remotely on May 26, 2020, May 27, 2020 and May 28, 2020. On May 28, 2020, employer requested claimant provide a release to return to work effective May 26, 2020 from her physician. Claimant's physician would not provide the release.

Employer terminated claimant's employment on May 28, 2020, because claimant's leave had expired but claimant had not been released to return to work. There was no other reason for claimant's termination. Claimant filed an initial claim for unemployment insurance benefits effective May 24, 2020. Claimant's recovery was extended by her physician by two weeks; claimant was released by her physician to return to work effective June 18, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not voluntarily quit her employment; claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code §§ 96.5(1). 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). Where there is no expressed intention or act to sever the employment relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). In this case, claimant had no intention of terminating her employment relationship with Annett Holdings. Because claimant did not voluntarily quit her job, claimant's separation from employment must be analyzed as a discharge.

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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66

(Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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).

There is no evidence of misconduct by claimant. Employer discharged claimant because she was not released by her physician to return to work before her medical leave expired. Claimant's failure to recover and be released by her physician prior to the expiration of her leave was not a willful. There is no evidence that claimant deliberately violated or disregarded standards of behavior that employer had a right to expect of her. Employer has not met its burden of proving disqualifying job-related misconduct. Benefits are allowed provided claimant is otherwise eligible.

The next issue to be determined is whether claimant is able to and available for work. For the reasons that follow, the administrative law judge concludes claimant was able to and available for work effective June 18, 2020. Benefits are allowed effective June 18, 2020.

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. 871-24.22(1), (2) provide:

Benefits 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor

market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(6), (35) provide:

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

(6) If an individual has a medical report on file submitted by a physician, stating such individual is not presently able to work.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. Claimant had a medical report stating she was unable to work and was under the care of her physician between filing her initial claim effective May 24, 2020 and obtaining a release from her physician effective June 18, 2020. Therefore, claimant was not able to and available for work until June 18, 2020. Accordingly, benefits are allowed effective June 18, 2020 provided claimant is otherwise eligible.

DECISION:

The July 20, 2020 (reference 01) unemployment insurance decision is modified in favor of appellant. Claimant was discharged for no disqualifying reason. Claimant was able to and available for work effective June 18, 2020. Benefits are allowed effective June 18, 2020, provided claimant is otherwise eligible.



Adrienne C. Williamson
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September 10, 2020
Decision Dated and Mailed

acw/scn