

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

ANTAYSIA S BROOKS

Claimant

and

MERIT RESOURCES II INC

Employer

HEARING NUMBER: 17BUI-05658

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-1

DECISION

The Claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** on the issue of the separation and **REMANDS** on the issue of availability and ability to work as set forth below.

FINDINGS OF FACT:

The Administrative Law Judge's findings are adopted by the Board as its own. In addition the Board finds that the Claimant did not intend to quit her employment, and did not say to the Employer that she quit.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.5(2)(a) (2017) provides:

Discharge for Misconduct. If the department finds the individual has been discharged for misconduct in connection with the individual's employment:

The individual shall be disqualified for benefits until the individual has worked in and been paid wages for the insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The Division of Job Service defines misconduct at 871 IAC 24.32(1)(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 the 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 is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects 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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000).

Quit: Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits: Voluntary Quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Generally a quit is defined to be "a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces." 871 IAC 24.1(113)(b). Furthermore, Iowa Administrative Code 871—24.25 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.

Since the Employer had the burden of proving disqualification the Employer had the burden of proving that a quit rather than a discharge has taken place. The Iowa Supreme Court has thus been explicit: “the employer has the burden of proving that a claimant’s departure from employment was voluntary.” *Irving v. EAB*, slip op at 57, No. 15-0104 (Iowa 6/3/2016)(amended 8/23/16); On the issue of whether a quit is for good cause attributable to the employer the Claimant had the burden of proof by statute. Iowa Code §96.6(2). “[Q]uitting requires an intention to terminate employment accompanied by an overt act carrying out the intent.” *FDL Foods, Inc. v. Employment Appeal Board*, 460 N.W.2d 885, 887 (Iowa App. 1990), accord *Peck v. Employment Appeal Board*, 492 N.W.2d 438 (Iowa App. 1992).

Here the Claimant was asking for, and received a leave of absence. It is not even clear that a separation of employment occurred since the Claimant was not returned part-time only because no placement was available. It wasn’t a question of being “rehired.” The Claimant moreover did not satisfy the requisites for quitting set out above. See *Prairie Ridge Addiction Treatment Services v. Jackson & EAB*, 11-0784 (Iowa App. January 19, 2012). We reverse the disqualification based on quitting.

It appears that the Claimant filed for benefits starting on the benefit week ending May 6, and that she was earning more than her weekly benefit about plus \$15 starting on the benefit week ending June 24, 2017. Normally one is not able and available while on leave. 871 IAC 24.22(2); 871 IAC 24.23(10). Also being able to work is a requisite of collecting benefits. 871 IAC 24.22(1); 871 IAC 24.23(34)-(35). We note further that an individual need only be available to the same extent as when base period wage credits were earned. 871 IAC 24.22(2)(f).

DECISION:

The administrative law judge’s decision dated June 16 is **REVERSED**. The Employment Appeal Board concludes that the claimant was not separated from employment in a manner that would disqualify the Claimant from benefits. Accordingly, the Claimant is allowed benefits **provided the Claimant is otherwise eligible**.

This matter is **REMANDED** to Iowa Workforce Development, Benefits Bureau to address whether the Claimant is able and available to work during the weeks in which she has claimed for benefits.

Kim D. Schmett

James M. Strohman