

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DEANNA D VALLIANT**  
Claimant

**PILOT TRAVEL CENTERS LLC**  
Employer

**APPEAL 21A-UI-20072-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/11/21  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

Deanna D Valliant, the claimant/appellant filed an appeal from the September 8, 2021 (reference 04) unemployment insurance decision that denied benefits based on a July 7, 2021 voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on November 1, 2021. Ms. Valliant participated and testified. The employer did not register for the hearing and did not participate.

**ISSUE:**

Did Ms. Valliant voluntarily quit without good cause attributable to the employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Valliant began working for the employer in January 2021. She worked as a full-time cashier until about April 2021 when she began working part-time. Ms. Valliant's part-time schedule was Mondays, Tuesday and Wednesday each week. Ms. Valliant's employment ended on July 7, 2021.

On Wednesday, July 7, Ms. Valliant was in the hospital. She called the employer to explain that she would not be able to attend work that day. The manager on duty initially answered the phone and gave the phone to the general manager. As Ms. Valliant was explaining the situation to the general manager, the general manager hung up. Ms. Valliant called and texted the general manager. The general manager did not respond. Before her next scheduled shift on Monday, July 12, Ms. Valliant attempted to check her schedule on the employer's app. Ms. Valliant no longer had access to the app. Since Ms. Valliant has called and texted the general manager with no response, and she no longer had access to the app all after the general manager hung up on Ms. Valliant on July 7, Ms. Valliant did not return to work.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Valliant did not quit. The employer terminated Ms. Valliant's 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.

In this case, Ms. Valliant called in on July 7 to explain to the employer that she would not be able to attend work that day because she was in the hospital. The general manager hung up on Ms. Valliant as she was explaining her call-in, then the employer removed Ms. Valliant's access to the scheduling app and would not respond to Ms. Valliant's texts or calls. The employer ended Ms. Valliant's employment. However, the employer did not participate in the hearing and provided no evidence of misconduct on the part of Ms. Valliant. Benefits are allowed.

**DECISION:**

The September 8, 2021 (reference 04)) unemployment insurance decision is reversed. Ms. Valliant did not quit. The employer discharged her from employment for no disqualifying reason. Benefits are allowed, provided Ms. Valliant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



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December 2, 2021  
Decision Dated and Mailed

dz/scn