

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JACQUELYN K EGGERT
Claimant

VISITING NURSE ASSOC OF JOHNSON CO
Employer

APPEAL 22A-UI-06711-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/20/22
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(A) – Discharge due to Vaccine Refusal

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the March 7, 2022 (reference 01) unemployment insurance decision that denied regular State of Iowa funded unemployment insurance benefits based upon claimant voluntarily quitting work. The parties were properly notified of the hearing. A telephone hearing was held on April 27, 2022. The claimant participated personally. The employer participated through witness Karen Cox. Claimant's Exhibit A was admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a certified nursing aide and home care aide. She worked approximately 30 hours per week. Her job duties included visiting patients in their homes to provide daily living cares. Her last day physically worked on the job was February 11, 2022.

In 2021, the claimant was notified by her employer that federal laws were requiring employees to either be vaccinated against the COVID-19 virus or have an exemption from vaccination. The only exemptions allowed based on the federal law were due to medical reasons for refusal or religious reasons for refusal.

The claimant did not get a vaccination against COVID-19 due to her own personal beliefs, including her feelings that the vaccination was created too quickly and not properly researched. She spoke to Ms. Cox and informed her of her decision not to be vaccinated. The claimant did not believe that she qualified for the medical or religious exemptions the employer was offering because she was a healthy individual who was not instructed by a medical provider to refrain from having the vaccination and it was not her religious beliefs that kept her from becoming vaccinated against COVID-19.

While the federal law was being litigated, claimant was allowed to continue working even though she was not vaccinated. When the mandate was scheduled to become effective, claimant was informed via email that if she chose not to become vaccinated or secure an exemption, her employment would be terminated effective February 11, 2022. See Exhibit A. On February 11, 2022, claimant finished her shift and turned in the employer's property that she had in her possession. She again asked her supervisor if anything had changed with the required COVID-19 vaccination mandate, and she was informed that it had not. Claimant would not have been allowed to continue working for the employer past the February 11, 2022 date without receiving a COVID-19 vaccination or securing an exemption for medical or religious purposes.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

The first issue is whether the separation from employment was a voluntary quit. The administrative law judge finds that it was not.

Iowa Code §96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). It is the employer's burden to establish that the claimant voluntarily quit. See Iowa Code § 96.6(2).

In this case, the only reason that the claimant's last day of work was February 11, 2022, was because that was the date the employer informed her would be her last day if she failed to comply with the mandate or have an approved exemption on file. The claimant did not intend to discontinue working for the employer, in fact, prior to surrendering the employer's property she again asked if any changes had been made to the mandate and was told there were no changes. As such, because the employer would not have allowed the claimant to continue working past February 11, 2022, a discharge from employment occurred.

Iowa Code § 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.

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. 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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The employer has the burden of proof in establishing disqualifying job-related 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986)(emphasis added).

On October 29, 2021, Governor Reynolds signed into law House File 902, which, among other things, amended Iowa Code Chapter 96 to include a new section 96.5A. Section 5 of House File 902 provided that the act would take effect upon enactment. The new section 96.5A provides:

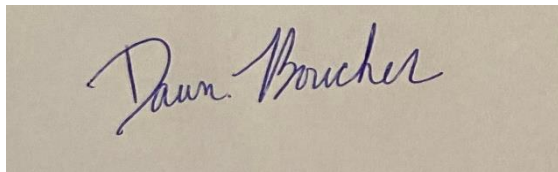
Notwithstanding any other provision of this chapter to the contrary, an individual who is discharged from employment for refusing to receive a vaccination against COVID-19, as defined in section 686D2, shall not be disqualified for benefits on account of such discharge.

Because Iowa Code section 96.5A was in effect when the claimant was discharged on February 11, 2022, it shall govern in this case. It is clear that the claimant was discharged from employment for refusing to receive a vaccination against COVID-19. It is also clear that both parties in this case were put between a “rock and a hard spot”. The employer was required by federal law to have all employees vaccinated or secured exemptions on file. The law only allowed the employer to use medical or religious exemptions. The claimant was uncomfortable completing either exemption request as they did not comport with the reasons for her refusal of the COVID-19 vaccination. The claimant should not be required to be untruthful in completing an exemption request.

In this case, the claimant was discharged from employment for refusing to receive a vaccination against COVID-19, and therefore the separation from employment is not disqualifying. See Iowa Code § 96.5A. Unemployment insurance benefits are allowed, provided the claimant remains otherwise eligible. This employer’s account may be subject to charges for benefits paid. See Iowa Code § 96.7(12).

DECISION:

The March 7, 2022 (reference 01) unemployment insurance decision is reversed. The claimant’s separation was not disqualifying pursuant to Iowa Code § 96.5A. Unemployment insurance benefits funded by the State of Iowa are allowed, provided the claimant remains otherwise eligible.



Dawn Boucher
Administrative Law Judge

April 28, 2022
Decision Dated and Mailed

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