

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BETTY J RUSSELL
Claimant

CROSSROADS INC
Employer

APPEAL 21A-UI-18729-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/17/21
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Betty Russell (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated September 3, 2021 (reference 02) that disqualified claimant from unemployment insurance benefits based on a finding she quit on February 25, 2021 by failing to report to work or notify employer for three consecutive days.

A telephone hearing was held on October 18, 2021. The parties were properly notified of the hearing. The claimant participated personally. Crossroads Inc., (employer/respondent) participated by HR Manager Marie Geurink. Supported Community Living Manager Alicia Jayanthan participated as a witness for employer. Employer was represented by Hearing Rep. Elsie Poucel.

Claimant's Exhibits 1 and 2 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant's first day of employment was August 3, 2020. Claimant's immediate supervisor was Jayanthan. Claimant worked for employer full-time as residential support staff. The last day claimant worked on the job was January 14, 2021. Claimant was discharged on February 25, 2021 due to policy violations.

Claimant called employer from a client's residence on January 14, 2021 to report she just learned she was positive for COVID-19. Claimant was immediately sent home. Claimant's reporting to work with potential COVID-19 symptoms and failure to notify employer that she had been tested for COVID-19 and stay out of work until the results were received were in violation of employer's policies. Claimant was on notice of those policies via a memorandum sent to staff in September

2020. Claimant did not believe she needed to report the information to employer because her doctor believed she only had a sinus infection and the COVID-19 test was precautionary.

Claimant's doctor held her out of work due to continuing COVID-19 symptoms from January 14, 2021 and continuing until the date of separation. Claimant's doctor initially indicated she could return to work on February 22, 2021 but then determined claimant should complete another medical procedure first. Claimant did not notify employer of this information until employer contacted claimant's doctor on February 25, 2021 to inquire as to her status, as it had not heard from claimant for approximately two weeks. At that time employer discharged claimant due to failing to notify it of the February 22, 2021 return date. Claimant was not on the schedule after that date but employer considered her failure to report to work on February 22, 23, and 24 to be unexcused absences.

Claimant was in contact with employer on January 16, 18, 23, 26 as well as February 2, 3, 4, and 11, 2021. Neither claimant nor employer contacted each other after that date. Employer stopped contacting claimant because it was frustrate with having to reach out to her so frequently. Claimant did not reach out because she believed her doctor was keeping employer apprised of her status and that employer was primarily interested in when she was released to return to work. At no time did claimant state that she was resigning or no longer wished to perform work for employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated September 3, 2021 (reference 02) that disqualified claimant from unemployment insurance benefits based on a finding she quit on February 25, 2021 by failing to report to work or notify employer for three consecutive days is REVERSED.

In this case, the claimant did not have the option of remaining employed nor did she express intent to terminate the employment relationship. Where there is no expressed intention or act to sever the 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).

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 provides in relevant part:

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).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

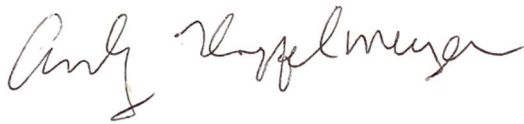
Employer has not carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2). Claimant's failure to hold herself out of work and report her COVID-19 test is best characterized as an isolated good-faith error in judgment or discretion rather than misconduct. Claimant's conduct after that time does not rise to the level of misconduct, either. Claimant did not fail to report for work, as she was not scheduled to work. Finally, claimant would have been well-advised to keep employer better informed as to her health status. However, her beliefs that

her doctor was keeping employer informed of her health status and that employer was primarily interested in when she was released to return to work and therefore more frequent communication was unnecessary were not totally unreasonable in the circumstances. Notably, claimant was responsive to employer's request for information on many occasions during her absence.

For these reasons, the administrative law judge finds the separation from employment was not disqualifying.

DECISION:

The decision dated September 3, 2021 (reference 02) that disqualified claimant from unemployment insurance benefits based on a finding she quit on February 25, 2021 by failing to report to work or notify employer for three consecutive days is REVERSED. The separation from employment was not disqualifying. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible. Employer's account is subject to charge.



Andrew B. Duffelmeyer
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October 25, 2021
Decision Dated and Mailed

abd/kmj