

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMBER O DONNELL

Claimant

APPEAL 21A-UI-25038-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MEDICAL ONCOLOGY HEMATOLOGY

Employer

OC: 10/10/21

Claimant: Appellant (2)

Iowa Code § 96.5(1) – Voluntary Quit

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

Iowa Code § 96.5A – Refusal of COVID-19 Vaccination – no disqualification

Iowa Code § 96.7(12) – Discharge for Refusal of COVID-19 Vaccination – limitation on actions

Iowa Admin. Code r. 871-24.26(21) – Voluntary Quit in lieu of Discharge

Iowa Admin. Code r. 871-24.32(1)(a) – Discharge for Misconduct

STATEMENT OF THE CASE:

On November 9, 2021, the claimant filed an appeal from the November 1, 2021, (reference 01) unemployment insurance decision that denied benefits based on an Iowa Workforce Representative's determination that the claimant was discharged from her employment for violating a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on January 10, 2022. Claimant Amber O Donnell participated and testified. Employer participated through Donna Bower, Chief Human Resources Officer and Jane Osterson, Chief Operations Officer. The administrative judge took official notice of the administrative record.

ISSUE:

Was the claimant discharged from employment for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant began working for employer on May 29, 2018. Claimant last worked as a full-time chemotherapy pharmacy technician. Claimant was separated from employment on October 8, 2021, when she quit her employment in lieu of being terminated for refusing to be vaccinated against Covid-19. The employer required that all employees receive a vaccination against Covid-19. Any employee not willing to receive a vaccination would be terminated due to the employer's newly implemented policy. The employer testified that the claimant quit her employment in lieu of being terminated and the claimant would have been terminated regardless for her refusal to receive a Covid-19 vaccination.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes claimant voluntarily quit employment in lieu of discharge for no disqualifying reason.

Iowa Code §96.5 provides in relevant part:

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.
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 Code § 96.5A provides:

Refusal of COVID-19 vaccination – no disqualification

3. 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 686D.2, shall not be disqualified for benefits on account of such discharge.

Iowa Code § 96.7(12)

Discharge for refusal of COVID-19 vaccination – effect on experience and rating limitation on actions

If an employee is discharged from employment for refusing to receive a vaccination against COVID-19, as defined in section 686D.2, the contribution rate and unemployment experience of any employer employing the employee or an employer that previously employed the employee other than the employer that so discharged the employee, shall be unaffected by such discharge. The department shall not impose any penalty on, or take any other action otherwise permitted under this chapter against, any employer employing the employee, or an employer that previously employed the employee other than the employer that so discharged the employee, as a result of such discharge.

Iowa Admin. Code r. 871-24.26(21) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

- (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

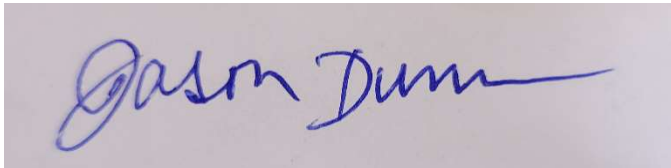
Since claimant would not have been allowed to continue working, she had not resigned, the separation is properly analyzed as a discharge and the burden of proof falls to employer to show separation was for disqualifying misconduct.

The claimant quit in lieu of being terminated for refusing to receive a vaccination against COVID-19. The claimant's refusal and subsequent discharge are not disqualifying. Benefits are allowed provided claimant is otherwise eligible. Employer account 155484-000 is the only account that shall be charged,

DECISION:

The November 1, 2021, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Employer account 155484 is the only account that shall be charged.



Jason Dunn
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February 2, 2022
Decision Dated and Mailed

jd/kmj