

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

ROBERT J GARY
Claimant

APPEAL NO: 20A-UI-08276-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DRIVELINE RETAIL MERCHANDISE INC
Employer

OC: 03/15/20
Claimant: Appellant (1)

871 IAC 24.23(10) – Leave of Absence
Section 96.4-3 – Able and Available
Section 96.5-2-a – Discharge/Misconduct

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 6, 2020, reference 04 decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 25, 2020. The claimant participated in the hearing. Kaitlyn Seehorsch, Human Resources Generalist, participated in the hearing on behalf of the employer. The parties waived notice on the separation issues. Employer's Exhibit One and Claimant's Exhibit A were admitted into evidence.

ISSUES:

The issues are whether the claimant is able and available for work, whether he is on a leave of absence and whether he was discharged for disqualifying job misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant requested and was given a leave of absence beginning March 16, 2020, because he has diabetes and two autistic children and is concerned about COVID -19. He also needed to help at home when school closed. The claimant's family continues to shelter in place and plans to continue to do so until there is either a vaccine or treatment for COVID-19 is discovered.

The employer issued notices to employees on shelter in place COVID-19 leave after 45 days and required them to respond with whether they intended to return to work or not. The claimant did not respond and his employment was terminated June 20, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did take a leave of absence, was subsequently terminated from employment and is not able and available for work.

Iowa Code section 96.4-(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871.24.23(10) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

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(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).

The employer has the burden of proving disqualifying misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged him for reasons constituting work-connected misconduct. Iowa Code section 96.5-2-a. Misconduct that disqualifies an individual from receiving unemployment insurance benefits occurs when there are deliberate acts or omissions that constitute a material breach of the worker's duties and obligations to the employer. See 871 IAC 24.32(1).

The claimant requested and was given a leave of absence to shelter in place and care for his children. After 45 days his employment was terminated when he did not respond to the employer's inquiry about whether he planned to return to work. He is not eligible for benefits from March 16 through June 20, 2020, because he was on a leave of absence and was not considered able and available for work. He was discharged from employment for no disqualifying reason June 20, 2020, but he is still not able and available for work. As long as the claimant is sheltering in place, regardless of the reason, he remains unable and unavailable for work. Accordingly, benefits must be denied.

DECISION:

The July 6, 2020, reference 04, decision is affirmed. The claimant is not able and available for work and did take a leave of absence from March 16, 2020 to June 20, 2020, at which time his employment was terminated. The claimant is not able and available for work. Benefits are withheld until such time as the claimant makes himself available for work to the extent he was available during the base period history.

Note to Claimant: This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



Julie Elder
Administrative Law Judge

August 28, 2020
Decision Dated and Mailed

je/scn