

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GABRIELA T BLAKEY
Claimant

WELLS ENTERPRISES INC
Employer

APPEAL 21A-UI-07930-S2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/07/21
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 18, 2021, (reference 02) unemployment insurance decision that denied benefits based upon her voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on May 27, 2021. Claimant Gabriela T Blakey participated. Employer Well Enterprises, Inc. participated through associate business partner of human resources Christopher Stahl and was represented by hearing representative Jackie Boudreaux.

ISSUE:

Did claimant voluntarily leave the employment without good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed by employer as a full-time production employee from January 20, 2020, through December 29, 2020, when she was discharged.

On November 18, 2020, claimant tested positive for COVID-19. She was placed on a 14-day quarantine leave by the employer. While claimant was on leave, her children were home due to a COVID quarantine. On December 3 or 4, 2020, claimant spoke to HR employee Allison and explained she needed additional leave. On December 7, 2020, associate business partner of human resources Christopher Stahl spoke to claimant and inquired whether claimant had filed for a leave of absence through third-party administrator since she needed leave beyond the approved 14-day COVID leave. Leaves of absences must be processed through the third-party administrator. Stahl attempted to follow up with claimant to see if she had filed for the leave, and if not, when she would be returning to work. He left her voicemails on December 10, 14, and 18, 2020. Claimant did not return his phone calls because as Allison was already aware she needed additional leave, there was no further need to speak to anyone else from HR.

On December 18, 2020, employer sent a certified letter to claimant instructing claimant to contact it within ten days or it would consider her employment ended. Claimant denied receiving the letter, but the tracking system stated it was signed for by someone in her household. Claimant did not contact employer, and on December 29, 2020, employer terminated claimant for failing to maintain contact and for failing to file for a leave of absence.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment due to job-related misconduct.

Iowa Code section 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.

Claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973). 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).

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.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to employer's version of events.

Here, claimant was discharged for failing to return to maintain contact with employer after a leave of absence ended and for failing to apply for additional leave through employer's third-party administrator. It is not credible that claimant believed that communication with HR in early December 2020 was sufficient to remain on leave indefinitely. Claimant acknowledged she disregarded phone calls requesting she contact employer and did not respond to direct correspondence from the employer requiring an answer. The burden was claimant's to communicate with the employer in order to preserve her employment. Claimant did not do this.

Claimant's decision to ignore the ten-day letter and refusal to communicate with the employer amounts to disqualifying misconduct. Benefits are withheld.

DECISION:

The March 18, 2021, (reference 02) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Stephanie Adkisson
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June 11, 2021
Decision Dated and Mailed

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