

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MCKENZIE J MARSHALL**  
Claimant

**ADVANCED HOME HEALTH CARE INC**  
Employer

**APPEAL 22A-UI-07046-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/06/22**  
**Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct  
Iowa Code § 96.5A – Vaccine Refusal Exclusion from Misconduct  
Iowa Code § 96.7(12) – Vaccine Refusal Charge to Employer

**STATEMENT OF THE CASE:**

The claimant, McKenzie J Marshall, filed an appeal from the March 8, 2022, (reference 01) unemployment insurance decision that denied benefits based the conclusion she was suspended on February 11, 2022 for violation of company rules. The parties were properly notified of the hearing. A telephone hearing was held on April 29, 2022. The claimant participated. The employer participated through Chelsey Jaril.

**ISSUES:**

Whether the claimant was discharged due to job related misconduct?

Whether the claimant is able and available for work after her separation?

**FINDINGS OF FACT:**

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

The claimant was employed full-time as a home health aid from July 23, 2021, until this employment ended on February 11, 2022, when she was terminated. The claimant's hourly wage was \$14.00 per hour.

The employer has a vaccine policy that mandates employees to get the Covid19 vaccination or obtain an exemption. The policy exempts employees who have sincere religious objections. It also exempts an employee if their physician states they have a medical condition which requires an exemption from the requirement.

The claimant tested positive for Covid19 in January. The CDC was advising patients to wait 90 days before receiving the vaccine after a positive diagnosis. The claimant attempted to get the

medical exemption, but her physician would not sign off on it. The claimant did not believe her religion forbids her from getting a Covid19 vaccine.

On February 11, 2022, the employer removed the claimant from the schedule pending her obtaining an exemption or receiving the vaccine.

Since she separated from the employer, the claimant has been looking for other certified nursing assistant positions or other full-time entry level positions. She has been looking for work in Keokuk and neighboring Burlington. She would not have been prevented from working due to inadequate transportation, childcare, health restrictions, illness or other limitations. She has not refused work. The administrative record KCCO shows the claimant made weekly claims from February 26, 2022 through April 16, 2022. The claimant made work searches for each of those weeks except for the week ending February 26, 2022. The claimant quit filing that week because she found work.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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.

Iowa Code § 96.5A provides:

Refusal of COVID-19 vaccination – no disqualification.

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) provides:

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. 871-24.32(9) provides:

(9) Suspension or disciplinary layoff. Whenever a claim is filed and the reason for the claimant's unemployment is the result of a disciplinary layoff or suspension imposed by the employer, the claimant is considered as discharged, and the issue of misconduct must be resolved. Alleged misconduct or dishonesty without corroboration is not sufficient to result in disqualification. This rule is intended to implement Iowa Code section 96.5 and Supreme Court of Iowa decision, Sheryl A. Cospers vs. Iowa Department of Job Service and Blue Cross of Iowa.

The claimant was removed from payroll on February 11, 2022 due to a disciplinary layoff. Under Iowa Admin. Code r. 871-24.32(9), the claimant's disciplinary layoff is properly analyzed as a discharge. It was clear to the claimant that she could not return unless she obtained a waiver or accepted the Covid19 vaccine. In this context, the administrative law judge concludes the claimant's discharge is excluded from misconduct per Iowa Code section 96.5A. Since the claimant is entitled to benefits, the overpayment issue is moot. This discharge is subject to the charging instructions listed above in Iowa Code section 96.7(12).

The administrative law judge will now evaluate whether the claimant was able and available for work effective February 11, 2022.

Iowa Code section 96.4(3)a provides:

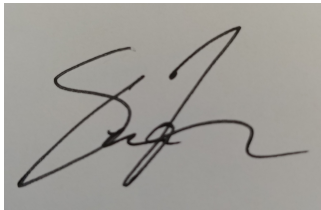
An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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".

The claimant has shown she was able and available for work after separating from employment on February 11, 2022. Benefits are granted.

**DECISION:**

The March 8, 2022, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. The claimant was able and available for work after her discharge. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



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Sean M. Nelson  
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June 6, 2022  
Decision Dated and Mailed

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