

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENNIFER MCCRAW
Claimant

BEACON OF HOPE HOSPICE INC
Employer

APPEAL 21A-UI-19765-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/20/21
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

On September 6, 2021, Jennifer McCraw (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated August 25, 2021 (reference 02) that disqualified claimant from unemployment insurance benefits based on a finding she voluntarily left employment on July 27, 2020 without a showing of good cause attributable to employer.

A telephone hearing was held on October 28, 2021. The parties were properly notified of the hearing. The claimant participated personally. Beacon of Hope Hospice Inc (employer/respondent) participated by Executive VP of HR Jennifer Romano.

Claimant's Exhibit 1 and Employer's Exhibit 1 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?
- II. Is claimant able to and available for work?

FINDINGS OF FACT:

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

Claimant's first day of employment was February 22, 2019. Claimant worked for employer as a full-time CNA. In this position claimant visited clients at their homes and in various facilities. The last day claimant worked on the job was June 24, 2020. Claimant's immediate supervisor was Lacy Clays.

Claimant provided Clays with a doctor's note on June 25, 2020. The note restricted claimant from providing care to patients who were positive for Covid-19. Claimant rarely came into contact with patients who were positive for Covid-19 in her position. However, employer did not engage in an interactive process with claimant to determine whether the restriction could be accommodated. Its policy is to not provide accommodations to staff who work in the field, as claimant did. It instead

immediately placed her on a 30-day personal leave. Claimant did not request to be placed on leave and was otherwise able and available to perform the duties of the position during that time.

Employer expected claimant to be fully released to return to work by July 27, 2020, and to contact it in advance of the return date. These expectations were unclear to claimant, although she did generally understand her leave could only last a month. She contacted Clays on July 28, 2020 to notify her that she was seeing her doctor that day and expected to be fully released. Claimant was released at that time and notified Clays of the same. However, employer determined to discharge claimant due to her not contacting it or being released by July 27, 2020.

The administrative law judge notes claimant was disqualified from benefits effective June 20, 2021 in a decision dated July 1, 2021. This disqualification was due to claimant failing to earn at least eight times her weekly benefit amount in insured wages during or after the prior benefit year beginning June 21, 2020. That decision remains in force.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated August 25, 2021 (reference 02) that disqualified claimant from unemployment insurance benefits based on a finding she voluntarily left employment on July 27, 2020 without a showing of good cause attributable to employer is REVERSED.

As an initial matter, the administrative law judge finds claimant did not voluntarily leave employment. 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 was discharged due to failing to obtain a full medical release to return to work after being placed on a 30-day medical leave. Failing to be fully released to return to work is not job-related misconduct.

Claimant's failure to contact employer about her work status on July 27, 2020 but instead on the following day does not constitute substantial job-related misconduct, either. These expectations were unclear to claimant, although she did generally understand her leave could only last a month. She contacted Clays the following day to notify her that she was seeing her doctor that day and

expected to be fully released. Instead of returning claimant to work at that time, employer chose to discharge her. Claimant's failure to heed the deadline was at worst an inadvertency and/or a good faith error in judgment or discretion and does not rise to the level of disqualifying misconduct, particularly where she contacted employer the following day and notified it of her release.

The administrative law judge finds the separation from employment was not disqualifying. However, claimant is otherwise disqualified from benefits. Claimant was disqualified from benefits effective June 20, 2021 in a decision dated July 1, 2021. This disqualification was due to claimant failing to earn at least eight times her weekly benefit amount in insured wages during or after the prior benefit year beginning June 21, 2020 such that she could receive benefits in a second benefit year. That decision remains in force. As such, the issue of whether claimant is able and available for work need not be addressed.

While the issue of whether employer failed to provide a reasonable accommodation is not before him, the administrative law judge wishes to note that employers are required under the Americans with Disabilities Act and the Iowa Civil Rights Act to make reasonable accommodations for employees with disabilities. See Iowa Code § 216.6; 42 U.S.C.A. § 12112. Further information is available at <https://icrc.iowa.gov>.

DECISION:

The decision dated August 25, 2021 (reference 02) that disqualified claimant from unemployment insurance benefits based on a finding she voluntarily left employment on July 27, 2020 without a showing of good cause attributable to employer is REVERSED. The separation from employment was not disqualifying. Benefits are allowed, provided claimant is not otherwise disqualified or ineligible.



Andrew B. Duffelmeyer
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November 16, 2021
Decision Dated and Mailed

abd/ol