

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRIANNA N SCOFIELD
Claimant

KUM & GO LC
Employer

APPEAL 21A-UI-15748-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/04/21
Claimant: Appellant (2)

Iowa Code §96.5(2)a – Discharge for Misconduct
Iowa Code §96.5(1) – Voluntary Quit
Iowa Code §96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Brianna N Scofield, the claimant/appellant, filed an appeal from the July 9, 2021, (reference 02) unemployment insurance (UI) decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 2, 2021. Ms. Scofield participated and testified. The employer did not register for the hearing and did not participate.

ISSUE:

Did Ms. Scofield voluntary quit without good cause attributable to the employer, or was she discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Scofield began working for the employer on September 4, 2019. She worked as a part-time cashier.

The employer provides employees their weekly schedules on an app available to employees on a cell phone. On Friday, April 2, 2021, Ms. Scofield took a screenshot of her weekly schedule. Ms. Scofield had previously told the employer that she could pick up some night shifts. The employer had scheduled her for several night shifts but Ms. Scofield was not scheduled to work on Friday, April 9. Ms. Scofield told the store manager that she could not pick up as many night shifts as she was scheduled. The store manager told Ms. Scofield that since is a part-time employee, the employer would schedule her as they saw fit.

On April 9, Ms. Scofield tried to look at her schedule again in the employer's app, but she was not able to get into the system. Ms. Scofield sent the store manager a message on a social media platform asking why she was not able to get into the app. The store manager asked Ms. Scofield if she would be working that day since she was scheduled to work later that day. Ms. Scofield told the manager that she did not know that her schedule had changed, but that she would get a babysitter and come to work. Ms. Scofield remembered that she would not be able

to clock in if she did not have access to the employer's app. Ms. Scofield told the store manager this information and the manager asked Ms. Scofield to call the manager.

That same day, Ms. Scofield found out that she had been exposed to someone who had tested positive for COVID-19. Ms. Scofield decided to not call the manager and instead go get tested for COVID-19. Throughout the day, other employees were telling Ms. Scofield that the employer had terminated her employment. Ms. Scofield did not attend work that day. The next day, Ms. Scofield called the employer and asked to speak to the manager and was told that the manager was not at the store. A few days later, Ms. Scofield went to the store to talk with the manager but the manager would not talk with her. Ms. Scofield continued to not be able to access the employer's app, and she and the employer had no further communication.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Scofield did not quit; she was discharged from employment for no disqualifying reason.

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.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) *Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dept 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 Dept 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 Dept of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The 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).

In this case, the employer ended the employment relationship by stopping Ms. Scofield from accessing the employer's app where she could see her schedule and which she used to clock into work and by not responding to Ms. Scofield on April 10, 2021 or thereafter. The employer did not participate in the hearing and provided no evidence to establish misconduct on the part of Ms. Scofield. Since employer has failed to meet its burden of proof in establishing disqualifying job-related misconduct, benefits are allowed.

DECISION:

The July 9, 2021, (reference 02) unemployment insurance decision denying benefits is reversed. Ms. Scofield 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.



Daniel Zeno
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September 13, 2021
Decision Dated and Mailed

dz/mh