

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ZACHARY D LEEPER**  
Claimant

**APPEAL 21A-UI-05105-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TARGET CORPORATION**  
Employer

**OC: 03/22/20**  
**Claimant: Appellant (3-R)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions  
Iowa Admin. Code r. 871-24.23(26) – Available – Part-time Same Wages and Hours  
Iowa Code § 96.19(38) – Total, Partial, and Temporary Unemployment  
Iowa Code § 96.7(2)a(2) – Employer Chargeability  
Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

On February 11, 2021, Zachary D. Leeper (claimant) filed an appeal from the February 9, 2021, reference 04, unemployment insurance decision that denied benefits effective October 25, 2020, based upon the determination he was not able to and available for work. After due notice was issued, a telephone hearing was held on April 19, 2021. The claimant participated. Target Corporation (employer) participated through Kate Deaton, Executive Team Leader – Human Resources. The Claimant's Exhibits A and B and the Employer's Exhibits 1 through 3 were admitted into the record. During the hearing, the parties waived notice on the issue of whether the claimant's separation in December 2020 qualifies him for benefits.

**ISSUES:**

Is the claimant totally, partially, or temporarily unemployed?  
Was the claimant able to work, available for work, and actively and earnestly seeking work effective November 15, 2020?  
Did the claimant voluntarily quit employment with good cause attributable to the employer or did the employer discharge the claimant for job related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed his claim for unemployment insurance benefits effective March 22, 2020, and reactivated his claim for benefits effective October 25. The claimant's weekly benefit amount is \$113.00. He began working for the employer on October 20, 2020, as a part-time seasonal Guest Advocate. The claimant did not have any guaranteed hours. He worked part-time hours from October 20 through November 13.

On or about November 13, the claimant began to experience symptoms that could be related to COVID-19 and he was unable to work. The claimant saw his doctor on November 30, who removed him from work until he had gone more than ten days without symptoms. The first day the claimant felt that he could return to work was December 15.

On December 15, the claimant notified Kate Deaton, Executive Team Leader – Human Resources that he was able to return to work. Deaton responded that they had shifts set aside for him on Wednesday, December 16, and Saturday, December 19 from 12:00 p.m. to 4:00 p.m. The claimant responded that he would work on December 19, but was unable to work on December 16. Deaton did not respond to the claimant's email, but scheduled him additional shifts on December 22 and 24. She expected him to report to work for the scheduled shift.

The claimant did not report to work on December 19 or for any of his subsequent shifts. He did not make any further attempts to contact the employer. Because he did not receive a response to his email stating he would work on December 19, the claimant believed his employment had ended.

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

For the reasons that follow, the administrative law judge concludes that the claimant was not unemployed as defined by Iowa law from October 25 through November 14, 2020. He was not able to and available for work from November 15 through December 19, 2020. Finally, he voluntarily quit employment without good cause attributable to the employer effective December 20, 2020. Benefits are denied effective October 25, 2020.

*1. Is the claimant totally, partially, or temporarily unemployed?*

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 Code section 96.19(38) provides:

Definitions.

38. Total and partial unemployment

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Admin. Code r. 871-24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

Under Iowa Employment Security Law, an individual must be unemployed to be eligible for benefits. Iowa Code § 96.19(38). Total and temporary unemployment occur when someone has received no wages and performed no services during any given week. *Id.* In this case, the claimant worked and earned wages between October 25 and November 14, 2020. Therefore, he was not totally or temporarily unemployed.

The next question is whether he was partially unemployed. In order to be partially unemployed, an individual must be laid off from full-time employment or working less than his or her regular full-time work week. *Id.* If an individual is employed in a part-time position working the same hours and wages as contemplated at hire, he or she cannot be considered partially unemployed. Iowa Admin. Code r. 871-24.23(26). The claimant was hired into a seasonal part-time position with no guaranteed hours. He worked part-time hours during the relevant period. As the claimant was working in a part-time job in the same hours and wages contemplated at hire, he was not partially unemployed and is not eligible for benefits from October 25 through November 14, 2020.

Effective November 15, the claimant stopped working and earning wages; however, he was not temporarily unemployed because the employer had work available. He became totally unemployed at that time, and he must be able to and available for work to be eligible for unemployment benefits.

*II. Was the claimant able to work, available for work, and actively and earnestly seeking work effective November 15, 2020?*

Iowa Admin. Code r. 871-24.22 provides, in relevant part:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

...

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

...

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

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

(1) An individual who is ill and presently not able to perform work due to illness.

...

(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.

...

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

An individual claiming benefits has the burden to prove that he is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant was sick and unable to report to work effective November 15. He was under the care of a doctor and was unable to return until December 15. Therefore, he was not able to and available for work from November 15 through December 19 and is not eligible for regular unemployment insurance benefits.

Effective December 20, the claimant was able to and available for work. However, he separated from employment around that same time and he must have a qualifying separation to remain eligible for benefits.

*III. Did the claimant voluntarily quit employment with good cause attributable to the employer or did the employer discharge the claimant for job related misconduct?*

Iowa Code section 96.5 provides, in relevant part:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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. But the individual shall not be disqualified if the department finds that:

...

d. The individual left employment because of illness, injury, or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury, or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

...

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. 871-24.25 provides, in relevant part:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

...

- (4) The claimant was absent for three days without giving notice to employer in violation of company rule.

...

- (35) The claimant left because of illness or injury which was not caused or aggravated by the employment or pregnancy and failed to:

- a. Obtain the advice of a licensed and practicing physician;
- b. Obtain certification of release for work from a licensed and practicing physician;
- c. Return to the employer and offer services upon recovery and certification for work by a licensed and practicing physician; or
- d. Fully recover so that the claimant could perform all of the duties of the job.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left his employment. *Irving v. Emp't Appeal Bd.*, 883 N.W.2d 179 (Iowa 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Emp't Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It 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).

The employer has met the burden of proof to establish that the claimant voluntarily quit. The claimant had the option of remaining employed and failed to report to work. The next issue is whether the claimant voluntarily quit employment with good cause attributable to the employer.

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984). Since the claimant did not report to work, and his assumption of having been fired was erroneous, the failure to continue reporting to work was an abandonment of the job. Benefits are denied.

**DECISION:**

The February 9, 2021, reference 04, unemployment insurance decision is modified in favor of the respondent. The claimant was not unemployed under Iowa law effective October 25, 2020, and was not able to work and available for work effective November 15, 2020. On or about December 19, 2020, the claimant voluntarily left the employment without good cause attributable to employer. Benefits are withheld effective October 25, 2020, until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

**REMAND:**

The claimant has filed a new claim for benefits effective March 21, 2021. Whether the claimant is eligible for benefits in the subsequent benefit year, consistent with this decision, is remanded to the Benefits Bureau for review and processing.



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Stephanie R. Callahan  
Administrative Law Judge

April 26, 2021  
Decision Dated and Mailed

src/scn

*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 unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to self-certify for PUA to determine your eligibility under the program.** Additional information on how to self-certify for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>. If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.