

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRITTANY GOURLEY

Claimant

APPEAL 21A-UI-18852-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CROSSROADS YOUTH AND FA

Employer

OC: 03/22/20

Claimant: Appellant (4)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting of Work
Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Code § 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the September 3, 2020 (reference 02) unemployment insurance decision that found claimant was not eligible for unemployment benefits after May 30, 2020 because she voluntarily quit work with this employer without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on October 20, 2021. The claimant participated personally. The employer did not participate. The claimant waived due notice of the issue of whether she was able to and available for work pursuant to Iowa Code § 96.4(3). The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 21A-UI-18853-DB-T; 21A-UI-18854-DB-T and 21A-UI-18855-DB-T.

ISSUES:

Is the appeal timely?

Was the claimant discharged for job-related misconduct?

Did the claimant voluntarily quit employment without good cause attributable to the employer?

Was the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A decision dated September 3, 2020 (reference 02) that found the claimant was not eligible for regular unemployment insurance benefits funded by the State of Iowa effective May 30, 2020 was mailed to the claimant's correct address of record. Claimant never received the decision in the mail. Claimant filed an appeal on August 26, 2021 after receiving other decisions that had found she was overpaid benefits.

Claimant was scheduled to begin working for this employer on March 16, 2020; however, her start date was delayed due to the employer deciding to push it back because of the COVID-19 pandemic. Claimant ended up starting the position on April 6, 2020 and worked full-time as an early head start teacher. On May 18, 2020, the claimant tendered an email resigning her

position effective June 1, 2020 because she had been offered another job that was more akin to her skill set. When she tendered her resignation, she was told by this employer that her employment was terminated immediately.

Claimant began working for Jim Taliaferro Department of Mental Health and Substance Abuse Services as a full-time peer support specialist on June 1, 2020. She worked in that full-time position until July 10, 2020.

Claimant began working for Peak Behavior Health as a full-time registered behavior technician on July 13, 2020. She worked for that employer until January 21, 2021. During her employment with Peak Behavior Health, there were multiple occasions where she was required to quarantine due to COVID-19 exposure.

Claimant began working for Children of Joy Learning Academy as a full-time employee from January 28, 2021 through April 16, 2021, when she went on maternity leave. At some point during her time with Children of Joy Learning Academy, she transitioned from full-time to part-time status.

On September 25, 2020, an assessment for Federal Pandemic Unemployment Assistance (PUA) benefits decision was issued finding that the claimant was eligible for Federal PUA benefits effective September 13, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

The first issue is whether the claimant's appeal shall be considered timely. The administrative law judge finds that it shall.

Iowa Code § 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter

taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

In this case, the claimant never received the decision denying her benefits. She filed the appeal on August 26, 2021, promptly after receiving other decisions stating she was overpaid benefits. As such, the appeal shall be considered timely due to U.S. postal service action in not delivering the initial denial decision to the claimant.

The next issue is whether the claimant's separation from employment was disqualifying. The administrative law judge finds that it was not disqualifying.

Iowa Code section 96.5(1)a provides:

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:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

A voluntary quitting means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer and requires an intention to terminate the employment. *Wills v. Emp't Appeal Bd.*, 447 N.W. 2d 137, 138 (Iowa 1989). 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); *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). 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).

Iowa Admin. Code r. 871-23.43(5) provides:

(5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

In this case, the claimant tendered her written resignation to quit her employment with this employer in order to accept an offer of better employment with Jim Taliaferro Department of mental Health and Substance Abuse Services, which she did start working at on June 1, 2020. Because of her resignation being tendered, this employer discharged her from employment.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 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.

Because there was no final incident of substantial job-related misconduct, the discharge from employment on May 18, 2020 was not disqualifying. Further, because the claimant tendered her resignation to accept other or better employment, there is no disqualification based on the separation from employment after May 30, 2020 as well. However, in order for a claimant to be eligible for unemployment insurance benefits, they must establish that they are able to and available for work.

Iowa Code § 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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

In this case, the claimant began working full-time for employer Jim Taliaferro Department of Mental Health and Substance Abuse Services effective June 1, 2020. She remained in full-time employment from June 1, 2020 through April 16, 2021 when she left work with Children of Joy Learning Academy due to her maternity leave. Because the claimant was employed full-time, she was working to such a degree that removed her from the labor market.

Iowa Admin. Code r. 871-24.23(23) provides:

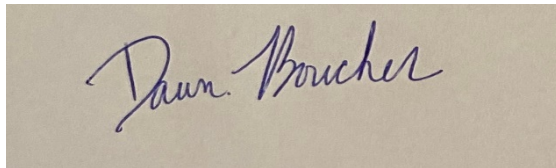
Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

As such, for the purposes of regular unemployment insurance benefits, the claimant has failed to establish that she was able to and available for full-time work effective June 1, 2020 and benefits are denied effective June 1, 2020 on that basis.

DECISION:

The appeal shall be considered timely. The September 3, 2020 (reference 02) decision is modified in favor of the appellant. The claimant's June 1, 2020 separation from employment with this employer is not disqualifying. The claimant was not able to and available for full-time work effective June 1, 2020 as she was working to such an extent that removed her from the labor market and regular unemployment insurance benefits are denied effective June 1, 2020 and continuing pursuant to Iowa Code § 96.4(3).



Dawn Boucher
Administrative Law Judge

October 29, 2021
Decision Dated and Mailed

db/scn