

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ANDRE C MYLES**  
Claimant

**MASTERBRAND CABINETS INC**  
Employer

**APPEAL 21A-UI-04661-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/20/20  
Claimant: Appellant (4R)**

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

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the February 2, 2021 (reference 01) unemployment insurance decision that denied benefits to the claimant based upon him voluntarily quitting work. The parties were properly notified of the hearing. A telephone hearing was held on April 12, 2021. The claimant participated personally. The employer participated through witness Deborah Tyler. The parties waived due notice of the issue of whether the claimant was able to and available for work. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Was the claimant was discharged for disqualifying job-related misconduct or did the claimant voluntarily quit without good cause attributable to the employer?  
Was the separation from employment disqualifying?  
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: Claimant was employed full-time as a boxer beginning on January 22, 2018. His last day physically worked on the job was July 6, 2020. Claimant's separation from employment occurred on July 27, 2020.

Beginning on July 7, 2020, the claimant notified the employer that he was exposed to a family member who tested positive for COVID-19. Claimant was also experiencing COVID-19 like symptoms at that time. Claimant was told to complete paperwork for a leave of absence from work through the employer's third party provider. The employer's third party provider notified the employer that the claimant's leave of absence from work was approved for July 7, 2020 through July 22, 2020. The employer did not know how or whether the claimant's return back to work date of July 23, 2020 was communicated to him but the third party provider typically communicates via mail or email with parties.

Claimant was not notified that he needed to return to work until he spoke with a representative of the human resources department over the telephone on Friday, July 24, 2020. Claimant was

told over the telephone that he was scheduled to work on Monday, July 27, 2020, but that the employer needed paperwork from the doctor stating he was able to return to work.

Claimant attempted to obtain paperwork from his medical provider to return back to work but was told by the medical provider that it would take a few days. Claimant notified the employer on Friday, July 24, 2020 that the medical provider said it would take a few days to get the proper paperwork to it in order to return to work.

Claimant did not have the paperwork from his medical provider to return back to work on Monday, July 27, 2020, so he did not report to work. He did not notify the employer that he was not working on July 27, 2020; however, he believed he had communicated that to the employer in his Friday, July 24, 2020 telephone conversation with the human resources representative.

Claimant did not have the paperwork to return back to work from his medical provider on Tuesday, July 28, 2020, so he did not return back to work. Claimant telephoned human resources on Wednesday, July 29, 2020 and was told that he no longer had a job with the company and that a letter was sent to him on Monday, July 27, 2020 notifying him of the separation from employment. Claimant was suffering from COVID-19 like symptoms from July 7, 2020 through August 8, 2020 and was not able to work.

Claimant continued to suffer from other medical issues after August 8, 2020. The matter of whether the claimant has been able to and available for work from August 8, 2020 and continuing for each week in which he has filed weekly-continued claims for benefits will be remanded to the Benefits Bureau for an initial investigation and determination.

Claimant's administrative records establish that he had a prior claim effective December 15, 2019. Claimant filed weekly-continued claims for benefits for the weeks from April 19, 2020 through July 25, 2020, prior to his separation from employment with this employer. Claimant was on a leave of absence for a period of time and also on two separate COVID-19 related quarantines during weeks in which he filed weekly-continued claims for benefits during his December 15, 2019 claim year. The first COVID-19 quarantine occurred from April 22, 2020 (benefit week of April 19, 2020) through May 5, 2020. The leave of absence occurred from May 6, 2020 (benefit week of May 3, 2020) through May 18, 2020. Claimant was on a second COVID-19 related leave from May 29, 2020 through June 19, 2020. Whether the claimant was able to and available for work during his COVID-19 related absences and his leave of absence in May of 2020 will be remanded to the Benefits Bureau for an initial investigation and determination.

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

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

Generally, the employer bears the burden of proving disqualification of a claimant who voluntarily quits. Iowa Code § 96.6(2). The employer also bears the burden of proving that a claimant's departure from employment was voluntary. *Irving v. Employment Appeal Bd.*, 883 N.W.2d 179, 210 (Iowa 2016). If a claimant has voluntarily quit, the claimant has "the burden of proving that a voluntary quit pursuant to Iowa Code § 96.5(1) was for good cause attributable to the employer." Iowa Code § 96.6(2). Since the employer has the burden of proving disqualification and the claimant only has the burden of proving the justification for a quit, the employer has the burden of proving that a particular separation is a quit.

Iowa Code §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.

A quit is defined to be “a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.” Iowa Admin. Code r. 871-24.1(113)(b). “[Q]uitting requires an **intention to terminate employment** accompanied by an overt act carrying out the intent.” *FDL Foods, Inc. v. Employment Appeal Board*, 460 N.W.2d 885, 887 (Iowa App. 1990)(emphasis added), see also *Peck v. Employment Appeal Board*, 492 N.W.2d 438 (Iowa App. 1992).

Iowa Admin. Code r. 871-24.25 provides:

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.

In this case, the claimant never intended to quit and did not tender any written or verbal resignation. The claimant did not return to work on Monday, July 27, 2020 due to him not having medical documentation stating that he could return to work. The greater weight of evidence fails to establish that the claimant intended to quit. Thus, he cannot be found to have quit under Iowa Admin. Code r. 871-24.25.

This is a case of a separation by mutual mistake. The employer thought the claimant was quitting and the claimant thought he had been discharged. A separation by mutual mistake is a “termination of employment” and falls within the definition of a “separation.” It is also clear that a separation by mistake does not fall within the definition of a quit or a discharge. As such, the claimant is not disqualified by the separation from employment under the circumstances of this case. See Iowa Admin. Code r. 871-24.1. The next issue is whether the claimant had been 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".

Iowa Admin. Code r. 871-24.22(1) provides:

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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

Analysis of whether a claimant is able to work and available to work is on a week by week basis. Claimant testified that he was not able to work due to COVID-19 like symptoms and exposure to a family member who was positive for COVID-19 from July 7, 2020 through August 8, 2020. As such, benefits are denied during that period of time.

Claimant also had other periods where he was unable to work due to illness, COVID-19 like symptoms, or exposure to COVID-19. Those weeks will be remanded to the Benefits Bureau for an initial investigation and determination regarding whether the claimant was able to work and eligible for benefits during those periods.

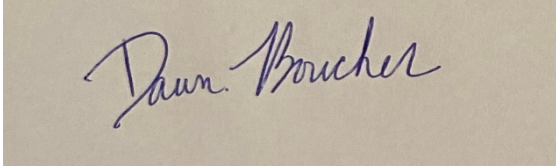
#### **DECISION:**

The February 2, 2020 (reference 01) unemployment insurance decision is modified in favor of the claimant. Claimant's separation from employment is not disqualifying. However, the claimant was not able to and available for work from July 5, 2020 through August 8, 2020. Benefits are denied during those weeks. Unemployment insurance benefits are allowed effective August 9, 2020, pending the remanded issues listed below, and provided the claimant remains otherwise eligible.

#### **REMAND:**

Claimant testified that he has other medical issues he has been attending to after his separation from employment with this employer. **Whether the claimant has been able to and available for work from August 9, 2020 and continuing is remanded to the Benefits Bureau for an initial investigation and determination.**

Claimant was on a quarantine from April 22, 2020 (benefit week of April 19, 2020) through May 5, 2020. Claimant was on a leave of absence from May 6, 2020 (benefit week of May 3, 2020) through May 18, 2020. Claimant was on a second COVID-19 related leave from May 29, 2020 through June 19, 2020. **Whether the claimant was able to and available for work during the COVID-19 related absences and his leave of absence in May of 2020 is remanded to the Benefits Bureau for an initial investigation and determination.**



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Dawn Boucher  
Administrative Law Judge

April 15, 2021  
Decision Dated and Mailed

db/scn

**Note to Claimant**

- This decision may determine you are not eligible for regular unemployment insurance benefits funded by the State of Iowa under state law and 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.
- If you do not qualify for regular unemployment insurance benefits funded by the State of Iowa under state law, you may qualify for benefits under the Federal Pandemic Unemployment Assistance (“PUA”) section of the Coronavirus Aid, Relief, and Economic Security Act (“Cares Act”) that discusses eligibility for claimants who are unemployed due to the Coronavirus.
- **You will need to apply for PUA to determine your eligibility under the program.**  
For additional information on how to apply for PUA go to:  
<https://www.iowaworkforcedevelopment.gov/pua-information>.
- If you are denied regular unemployment insurance benefits funded by the State of Iowa and wish to apply for PUA, please visit:  
<https://www.iowaworkforcedevelopment.gov/pua-information> and scroll down to “Submit Proof Here.” You will fill out the questionnaire regarding the reason you are not working and upload a picture or copy of your fact-finding decision. Your claim will be reviewed for PUA eligibility. If you are eligible for PUA, you will also be eligible for Federal Pandemic Unemployment Compensation (FPUC) until the program expires. Back payments PUA benefits may automatically be used to repay any overpayment of state benefits. If this does not occur on your claim, you may repay any overpayment by visiting:  
<https://www.iowaworkforcedevelopment.gov/unemployment-insurance-overpayment-and-recovery>.
- If you have applied and have been approved for PUA benefits, this decision will **not** negatively affect your entitlement to PUA benefits.