

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**HEATHER KEHELER**  
Claimant

**APPEAL NO. 21A-UI-04916-ED-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 11/15/20**  
**Claimant: Respondent (1)**

---

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting  
Iowa Code § 96.3(7) – Overpayment  
IAC 871-24.10

**STATEMENT OF THE CASE:**

The employer filed an appeal from the January 27, 2021 (reference 01) unemployment insurance decision that approved benefits. The parties were properly notified of the hearing. A telephone hearing was held on April 14, 2021. The claimant, Heather Keleher participated personally. The employer, Care Initiatives Inc. participated through its hearing representative Alyce Smolsky, and interim administrator Lesley Smith. Claimant's exhibits A – D were admitted into the record.

**ISSUES:**

Did claimant voluntarily quit the employment with good cause attributable to employer? Was the claimant discharged for disqualifying job-related misconduct? Was the claimant over paid?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a certified nursing assistant (CNA) starting January 6, 2010. Her employment ended November 19, 2020. On the afternoon of November 17, 2020 claimant arrived to work the 2 p.m. – 10 p.m. shift. At some point during the shift she found out that there was not going to be an adequate replacement for her at 10 p.m. She was asked to work until 6 a.m. Claimant sent a text message to the Director of Nursing (DON) Jordan Toquinto stating that she would not stay until 6 a.m. but she would stay until 2 a.m. DON Toquinto responded with a thumbs up emoji. Claimant also told the charge nurse on the 2 p.m. – 10 p.m. shift that she would only stay until 2 a.m. She also told another nurse who arrive at 10 p.m. that she would only stay until 2 a.m. The employer failed to provide someone to relieve the claimant. At 2 a.m. claimant left the facility.

## REASONING AND CONCLUSIONS OF LAW:

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

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.

Unemployment statutes should be interpreted liberally to achieve the legislative goal of minimizing the burden of involuntary unemployment." *Cosper v. Iowa Dep't of Job Serv.*, 321

N.W.2d 6, 10 (Iowa 1982). The employer has the burden of proof in establishing disqualifying job misconduct. *Id.* at 11. 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).

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 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).

In this case claimant stayed four hours beyond the end of her shift before leaving at 2 p.m. as she had an appointment on the 18<sup>th</sup>. Claimant also received a positive response (thumbs up emoji) from the Director of Nursing when she sent a text message stating that she would leave at 2 a.m. This would seem to indicate approval or acceptance of her departure time.

The employer never argued that claimant was terminated for misconduct, only arguing that she voluntarily quit when she left before 6 a.m. The employer's termination paperwork says refused to carry out orders of a supervisor and failed to complete her shift, which would indicate some sort of misconduct. Even considering the evidence presented the employer fails to carry its burden of proving that the claimant's employment was terminated for disqualifying misconduct.

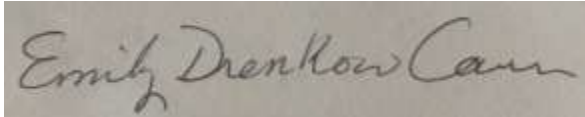
Claimant never had an intention to terminate the employment relationship, as she returned to work on the 19<sup>th</sup>, getting COVID tested and working for an hour before her employment was terminated by the employer. Her termination paperwork does not say voluntary quit. The closest it comes to voluntary quit is "walked off abandonment." The employer's own paperwork indicates misconduct more so than voluntary quit. Claimant's behavior may be an appropriate reason to terminate the employment relationship, but it is not of the severe nature required to be disqualifying misconduct.

Claimant did not voluntarily quit her employment on November 17, 2020, and was not terminated for disqualifying misconduct. Claimant is eligible for benefits. The January 27, 2021 unemployment decision is affirmed.

Since benefits are allowed, claimant was not over paid.

**DECISION:**

The January 27, 2021 (reference 01) unemployment insurance decision is affirmed. Claimant was not discharged from employment for disqualifying misconduct, and did not voluntarily quit. Benefits are allowed. Since benefits are allowed, claimant was not over paid.

A handwritten signature in cursive script, reading "Emily Drenkow Carr", written in dark ink on a light-colored background.

---

Emily Drenkow Carr  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515) 478-3528

April 22, 2021  
Decision Dated and Mailed

ed/kmj