

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RONALD S STRUG
Claimant

HTH COMPANIES INC
Employer

**APPEAL 21A-UI-04480-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/15/20
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

Claimant filed an appeal from the January 22, 2021 (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on April 8, 2021, at 1:00 p.m. Claimant participated. Employer did not participate. Claimant's Exhibit A was admitted.

ISSUES:

Whether claimant's separation was a discharge for disqualifying job-related misconduct or a voluntary quit without good cause attributable to employer.
Whether claimant was able to and available for work.

FINDINGS OF FACT:

As claimant was the only witness, the administrative law judge makes the following findings of fact based solely upon claimant's testimony: Claimant filed an initial claim for benefits effective March 15, 2020. Claimant was employed as a full-time Scaffold Builder from August 20, 2019 until his employment with HTH Companies ended on April 13, 2020. Claimant worked Monday through Friday from 7:00 a.m. until 3:30 p.m.

Claimant last worked for employer on March 12, 2020 or March 13, 2020. Employer sent claimant home because he appeared ill. Employer told claimant that he needed to be tested for Covid-19 and provide employer with a negative test result prior to returning to work. Claimant went to the hospital on March 18, 2020; the hospital did not have Covid-19 tests at the time. Claimant informed employer that there were no test at the hospital. Employer again instructed claimant that he could not return to work until he was tested or was no longer showing symptoms of Covid-19. Claimant was ill for two weeks, from March 13, 2020 until March 31, 2020. Claimant contacted employer in early April 2020 about returning to work. Claimant called and sent a text message to the employee who initially sent him home from work. Claimant received no response. Claimant also tried to contact his direct supervisor. Claimant received no response. On April 13, 2020, claimant reported to work and his access badge did not work. Claimant did not intend to quit his employment.

Claimant was out of town from May 30, 2020 until June 7, 2020. Claimant was ill with Covid-19 from November 10, 2020 until November 15, 2020 and quarantined from November 16, 2020 until November 29, 2020. Claimant had no other barriers to employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not voluntarily quit his employment; claimant was discharged for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code §§ 96.5(1). 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). Where there is no expressed intention or act to sever the employment relationship, the case must be analyzed as a discharge from employment. *Peck v. Emp't Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992). In this case, claimant had no intention of terminating his employment relationship with HTH Companies. Because claimant did not voluntarily quit his job, claimant's separation from employment must be analyzed as a discharge.

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 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. 871-24.32(1)(a) provides:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, the employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

There is no evidence of misconduct by claimant. Employer has not met its burden of proving disqualifying job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

The next issue to be determined is whether claimant is able to and available for work. For the reasons that follow, the administrative law judge concludes:

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 Admin. Code r. 871-24.22(1) and (2) provide, in pertinent 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.

Iowa Admin. Code r. 871-24.23(1), (25) and (35) provide:

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.

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

(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 of proof that he is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Claimant was ill from March 13, 2020 until March 31, 2020 and from November 10, 2020 until November 15, 2020. Claimant was advised by a medical professional to quarantine from November 16, 2020 until November 29, 2020. Claimant was out of town on vacation from May 30, 2020 until June 7, 2020. Claimant was not able to or available for work and, thus, is not eligible for unemployment insurance benefits during those periods. Accordingly, benefits are denied from March 15, 2020 until March 28, 2020; from May 31, 2020 until June 6, 2020; and from November 8, 2020 until November 28, 2020.

Claimant had no barriers to employment and, thus, was able to and available for work during all other periods of time since filing his initial claim.

DECISION:

The January 22, 2021 (reference 02) unemployment insurance decision is reversed. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible.

Claimant was not able to or available for work and, thus, is not eligible for benefits from March 15, 2020 until March 28, 2020; from May 31, 2020 until June 6, 2020; and from November 8, 2020 until November 28, 2020. Claimant was able to and available for work for all other periods of time since filing his initial claim effective March 15, 2020.



Adrienne C. Williamson
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April 19, 2021
Decision Dated and Mailed

acw/scn