

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

HANNAH L GROVE
Claimant

GRAPETREE MEDICAL STAFFING INC
Employer

APPEAL NO. 17A-UI-10474-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/19/17
Claimant: Appellant (2)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 11, 2017, reference 09, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on October 31, 2017. Claimant participated personally. Employer participated by Jeanenne Kinnetz.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on September 15, 2017. Employer discharged claimant on September 18, 2017 because claimant refused to ask her doctor to test her for drugs when claimant was going to her doctor to be tested for scabies.

Claimant worked as a CAN for employer. At work on September 15, 2017, claimant noticed that a number of clients appeared to have the same rash as a person who was found to have scabies. She reported this to her employer on an after-hours number and stated that she was going to have herself tested also.

Employer called claimant on Monday, September 18, 2017 and told claimant that if she was going to have testing done under workers' compensation that she would also have to have her doctor do a drug screening also prior to her return to work.

Claimant had the scabies testing done and decided that she wasn't submitting it under a workers' compensation claim. When claimant called to inform employer of this, employer stated that claimant still needed to have a drug screening performed as employer now reasonably suspected drug use by claimant as she did not agree to testing.

As claimant did not do the drug testing, she was terminated from her employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)a provides:

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

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:

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Henry* supra. In contrast, 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 deemed misconduct within the meaning of the statute. Rule 871 IAC 24.32(1)a; *Huntoon* supra; *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, Id. In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *State v. Holtz*, Id.

Iowa Code section 730.5(8) sets forth the circumstances under which an employer may test employees for the presence of drugs. (1). If claimant was randomly selected for unannounced testing and was not tested as part of drug rehabilitation. See section 730.5(8)a, b. (2). If the testing was part of a pre-employment screening or was required by federal law or by law enforcement. See 730.5(8)d, e. (3). If the testing was done as a result of claimant being involved in an accident at work. See 730.5(8)f. (4). The only other basis under which the employer could legitimately test claimant was reasonable suspicion. See 730.5(8)c.

The definition of "reasonable suspicion" is found at section 730.5(1)h. The employer acknowledged that there had not been observations of claimant at work that would lead to the conclusion that claimant was using drugs. The employer did not cite any abnormal conduct or erratic behavior while at work or any significant deterioration in her job performance. The only reason the employer tested claimant was the claimant had stated that she didn't wish to be tested in addition to her scabies testing.

The last incident, which brought about the discharge fails to constitute misconduct because employer did not have a reason for testing which would be allowable under Iowa law. As there was no accident, claimant's wish not to be tested was reasonable. Employer's finding of claimant's refusal to test as the basis for reasonable suspicion requesting to test is not appropriate.

DECISION:

The decision of the representative dated October 11, 2017, reference 09, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn