IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

DAVID M ADCOCK Claimant **SUMMERFIELD HOTEL LLC** Employer	**APPEAL 19A-UI-03342-NM-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 03/24/19** **Claimant: Appellant (2)**

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.5(2)a – Discharge Misconduct

STATEMENT OF THE CASE:

On April 22, 2019, the claimant filed an appeal from the April 12, 2019, (reference 01) unemployment insurance decision that denied benefits based on his voluntary quit. The parties were properly notified about the hearing. A telephone hearing was held on May 29, 2019. Claimant participated and testified. Employer participated through General Manager Dax Patel. Employer's Exhibits 1 through 7 were received into evidence.

ISSUE:

Did the claimant quit the employment without good cause attributable to the employer or was he discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on June 17, 2016. Claimant last worked as a part-time maintenance technician. Claimant was separated from employment on January 12, 2019, when he was discharged.

The claimant is employed as a maintenance technician at a hotel operated by the employer. Claimant was also living at that hotel until May 28, 2019. The relationship between claimant and Patel began to break down in November 2018, when the due date for claimant's rent was changed and claimant got behind on his rent. The employer initially tried to evict claimant, but was initially unsuccessful in doing so when the matter went to hearing.

Claimant was scheduled to work from 11:00 a.m. to 3:00 p.m. January 3 through January 6, 2019. (Exhibit 2). Sometime during the first week of January Patel told claimant that if he did not have his rent money, Patel would not allow him to work. On January 4, 2019, claimant sent Patel a text message to confirm this conversation. Patel responded by telling claimant his rent issue was separate from his employment and that if he had questions he should come to the

front desk and speak with him rather than text. (Exhibit 4). When claimant went to clock in on January 5, 2019, he found his timecard was not in the office by the front desk. Claimant was told by the front desk worker that Patel had taken the time card. Claimant took this to mean he was not allowed to work because of the issue with his rent. At 12:46 p.m. Patel sent claimant a message asking if he was coming to work. Claimant returned to work and, finding his time card had been returned, worked as scheduled on January 6. Claimant worked as scheduled on January 10 and 11 as well. (Exhibit 1).

On January 12, 2019, claimant went to clock in and again found his timecard missing. The person working at the front desk, Heidi, told claimant Patel had taken his timecard. Claimant attempted to call Patel, but got a message stating that his number had been blocked. Claimant looked to see if Patel was on site, but did not see his car. Claimant did not work, as he did not have a timecard. The following day, January 13, claimant also found his timecard missing. He also discovered his telephone number had been blocked from calling the front desk. As claimant's timecard was gone and Patel was not taking his calls, claimant assumed he had been discharged from employment. Claimant did not attempt to go to work on January 17.

On January 17, 2019, Patel produced three Employee Counseling Reports, one dated January 12, 2019, one dated January 13, 2019, and one dated January 17, 2019. (Exhibits 5 through 7). Each counseling report was for claimant failing to show up for or call in to work. Patel had each form signed by a witness, but could not confirm the witnesses who signed the forms were actually working at the same time claimant was scheduled to start. No attempts were made by Patel to contact claimant on January 12, 13, or 17. Claimant was deemed by Patel to have separated under the employer's attendance policy, which states three consecutive no call/no shows will be considered a voluntary quit. (Exhibit 3).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

The decision in this case rests, at least in part, on the credibility of the witnesses. 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 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. *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. *Id*.

Here, there are several areas in which the claimant's testimony differs from that of the employer. Both claim to have been working on January 12, 2019 and that the other was not onsite. However, the claimant was readily able to recall who was working the front desk at his scheduled start time and provide detailed information about his conversation with that individual. Patel, on the other hand, could not recall any such details. Additionally, while the employer's documentation contains witness signatures, the testimony indicates that at least one of those witnesses was not even present at claimant's scheduled start time. There were also multiple points during Patel's testimony during which seemed unsure of his answer, could not recall

details to answer, or gave contradictory answers. After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the claimant's version of events to be more credible than the employer's recollection of those events.

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 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.

871 IAC 24.32(1)a provides:

> Discharge for misconduct.
>
> (1) Definition.
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> 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

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). 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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential

liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

Here, the employer discharged the claimant from employment when it took his timecard, preventing him from clocking in and out of work, and refused to communicate with him. It appears this decision was based on an issue with claimant's rent. Based on the information and testimony given, the issue with claimant's rent appears to be unrelated to his job. Prior to taking claimant's timecard the employer had told him that his employment and the rent issue were two separate issues. As such, claimant's actions cannot be considered job-related misconduct. Furthermore, the claimant was not reasonably on notice that his job was in jeopardy, based on Patel's instance that the two issues were separate in the January 4 text message.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

DECISION:

The April 12, 2019, (reference 01) unemployment insurance decision is reversed. Claimant did not voluntarily quit, but was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Nicole Merrill
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs