IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

MISTY D STALEY Claimant **DAVENPORT FARM & FLEET INC** Employer	**APPEAL 21A-UI-05396-DZ-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 10/11/20** **Claimant: Appellant (2)**

Iowa Code §96.5(2)a – Discharge for Misconduct
Iowa Code §96.5(1) – Voluntary Quit
Iowa Code §96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Misty D Staley, the claimant/appellant, filed an appeal from the February 9, 2021, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on April 22, 2021. Ms. Staley participated and testified. The employer participated through Kyle Gjertson, human resources business partner.

ISSUES:

Was Ms. Staley discharged for disqualifying job-related misconduct or did she voluntarily quit without good cause attributable to the employer?
Is Ms. Staley able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Staley began working for the employer on September 3, 2019. She worked as a full-time associate.

In March 2020, the United States declared a public health emergency because of the COVID-19 pandemic. Ms. Staley did not attend work from May 27, 2020 through June 4, 2020 because she was experiencing COVID-19 symptoms and on advice of her doctor she was self-quarantining. While she was self-quarantining Ms. Staley learned that she had a medical issue with her colon. Ms. Staley informed the employer. The employer's policy provides that an employee with a medical issue may not return to work until the employee has submitted a medical inquiry form and has been released to return to work by their doctor. Ms. Staley was not aware of this policy.

On June 5, 2020, Ms. Staley contacted the employer to return to work. Ms. Staley's store management told her that the human resources office would determine if she could return to work. Ms. Staley contacted the human resources office and they told her that her store management would determine if she could return to work. This continued for several months. The employer did not tell Ms. Staley about the policy that an employee with a medical issue may

not return to work until the employee has submitted a medical inquiry form and has been released to return to work by their doctor.

On July 22, 2020, Ms. Staley's manager submitted a request for medical leave on Ms. Staley's behalf to the human resources office for Ms. Staley colon issue. The manager did not tell Ms. Staley that they were submitting this request and Ms. Staley did not know the request was being submitted. The employer's policy provides that a manager must submit a medical leave request form to the human resources office if an employee reports a medical condition.

On July 28, 2020, the human resources office sent Ms. Staley a letter informing her that she was not eligible for Family Medical Leave Act (FMLA) leave. Ms. Staley contacted the human resources office to let them know that she knew she was not eligible for FMLA leave and to ask to be put back on the schedule. The human resources office told Ms. Staley that her store management would have to put her back on the schedule. Ms. Staley called the store management and they told that the human resources office would have to be determined that she could return to work.

On August 20, 2020, the employer sent Ms. Staley a letter via certified mail telling her that she began a medical leave of absence as of July 22, 2020, that she had been advised about FMLA, and requesting that she complete and return the Medical Inquiry Form and Fitness for Duty form by September 3, 2020. Ms. Staley testified that she did not receive the letter. Mr. Gjertson did not have the certified letter confirmation number. Soon after September 3, 2020, the human resources office called Ms. Staley and told her that her employment was over since she did not return the forms by September 3, 2020.

REASONING AND CONCLUSIONS OF LAW:

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

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.
>
> 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 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*.

The findings of fact show how the administrative law has resolved the disputed factual issues in this case. The administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using his own common sense and experience.

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 this case, Ms. Staley did not quit. When Ms. Staley informed the employer of the issue with her colon, unbeknownst to her, the employer began the FMLA process and the accommodations process. Ms. Staley attempted for months to get back on the schedule but could not get a clear answer from the employer about why she could not be put back on the schedule. When Ms. Staley did not return the forms by September 3, 2020 the employer ended her employment. However, the employer has failed to establish misconduct. Benefits are allowed

DECISION:

The February 9, 2021, (reference 02) unemployment insurance decision is reversed. Ms. Staley was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Daniel Zeno
Administrative Law Judge
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April 27, 2021
Decision Dated and Mailed

dz/ol