

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TERRI L ENDRESS
Claimant

HOPE HAVEN AREA DEVELOPMENT CTR
Employer

APPEAL 21A-UI-08152-S2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 16, 2021, (reference 02) unemployment insurance decision that denied benefits on the basis that claimant was discharged for failure to follow instructions. The parties were properly notified of the hearing. A telephone hearing was held on June 2, 2021. Claimant Terri L. Endress participated. The employer Hope Haven Area Development Center participated through director of human resources Cheryl Wright, site manager Jade Hierstein, and director of residential services DeAnn Sields. Employer's Exhibits 1 -7 were received.

ISSUE:

Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a direct support professional from October 10, 2005, until December 11, 2020, when she was discharged.

Employer has a drug and alcohol policy that provides for random mandatory drug and alcohol testing. The policy states that any failure to cooperate with the policy, including failure to produce a sample, will result in termination. Claimant was aware of the policy.

Claimant was selected for a random drug screen. Claimant's supervisor Jade Hierstein asked claimant at the end of her shift on December 10, 2020, if she had somewhere to be right after work, and claimant stated she needed to get to the day care she operated. Hierstein told claimant to be expecting a call from her the following day. Claimant knew from past random drug screens that meant she would be selected for a drug screen.

While claimant was initially scheduled to work on December 11, 2020, she switched her shift with another employee prior to learning about the drug screen. Claimant and the other employee informed Hierstein of the switched shifts; however, the change was not entered into

the system and employer was unaware claimant was not scheduled to work on December 11, 2020.

When claimant arrived for the drug screen at Great River on December 11, 2020, she tried to provide a urine sample for a drug test. Claimant was unable to give a sample and was offered water. Staff at Great River told claimant to remain at the facility for three hours so she could attempt another sample. Claimant was upset because she had needed to return to her day care within one hour. Claimant contacted the employer and spoke to Hierstein and employee Jennifer Lafery and explained she needed to return to her daycare so her coverage ratio would not violate state laws. Claimant did not inform anyone from employer during those phone calls that she was not scheduled to work that day. Employer told claimant there would be consequences for her employment if she left the testing facility without providing a second sample.

Claimant left the facility without providing a sample. Employer terminated claimant's employment on December 11, 2020, for failing to complete the random drug screen.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

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). 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).

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 disputed factual issues were resolved.

An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). "[W]illful misconduct can be established where an employee manifests an intent to disobey the reasonable instructions of his employer." *Myers v. IDJS*, 373 N.W.2d 507, 510 (Iowa 1983) (quoting *Sturniolo v. Commonwealth, Unemployment Compensation Bd. of Review*, 19 Cmwlt. 475, 338 A.2d 794, 796 (1975)); *Pierce v. IDJS*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988).

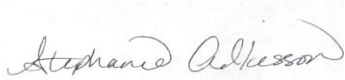
In insubordination cases, the reasonableness of the employer's demand in light of the circumstances must be evaluated, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985). The key to such cases is not the worker's subjective point of view but "what a reasonable person would have believed under the circumstances." *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988); accord *O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993) (objective good faith is test in quits for good cause). For example, in *Green v. IDJS*, 299 N.W.2d 651 (Iowa 1980) an employee refused to sign a warning to acknowledge that she understood why she was being warned. The Court found the refusal to be disqualifying as a matter of law, and did not focus on whether the warning was justified or not. *Green* at 655. The claimant's actions in refusing to do as told "show[ed] an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer." 871 IAC 24.32(1)(a).

In this case, claimant was terminated after refusing to submit to a drug test. Employer followed the provisions of Iowa § 730.5, which governs drug and alcohol testing in the private sector. Claimant was given an opportunity to review employer's drug and alcohol policy, which states she could be terminated for refusing to consent to a random drug and/or alcohol test. Employer did not have any notation that claimant was not scheduled to work on December 11, 2020, the day of her drug test. It was reasonable for the employer to ask claimant to submit to a drug test

as it believed she was scheduled to work that afternoon. Despite speaking to the employer on December 11, 2020, on more than one occasion, claimant failed to notify it that she was not working that day and this was the reason for her inability to remain for a second sample. Claimant left the facility without providing the sample. Claimant's actions were in deliberate disregard of employer's interest in maintaining a drug-free workplace and amounted to insubordination. Employer established claimant was terminated for job-related misconduct.

DECISION:

The March 16, 2021, (reference 02) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Stephanie Adkisson
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June 18, 2021
Decision Dated and Mailed

sa/mh