

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**SAYEE CHEA**  
Claimant

**WELLS FARGO BANK NA**  
Employer

**APPEAL 22A-UI-03992-CS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/12/21  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On February 2, 2022, the claimant/appellant filed an appeal from the January 25, 2022, (reference 01) unemployment insurance decision that denied benefits based on claimant being discharged for conduct not in the best interest of the employer. The parties were properly notified about the hearing. A telephone hearing was held on March 15, 2022. Claimant participated. Employer participated through hearing representative, Jennifer Groenwold. Also present was employer's Customer Service Manager, Sarah Brooks.

**ISSUE:**

Was the separation a discharge for job-related misconduct that disqualifies claimant from benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in April 2020. Claimant last worked as a full-time customer service representative. Claimant was separated from employment on December 17, 2022, when she was terminated.

Each October the employer performs an annual review of its employees. In 2020 and in 2021, claimant's annual review did not meet the employer's expectations. Since she was hired in April 2020, she has not consistently met their metrics on performance.

In October 2021 claimant received a written warning regarding her performance. Claimant was put on notice that if her performance did not improve that she would be terminated.

In the beginning of December 2021, Ms. Brooks reviewed claimant's calls. While Ms. Brooks was reviewing claimant's calls she noticed that claimant would call the employer's technology connect phone line. When claimant called into the help line the system would prompt claimant to put in her employer identification number. Claimant would not put in her number and claimant's call would be routed to the last place in the queue. The employer's technology connect phone line is

busy and usually has a wait time of 15-30 minutes. After a few minutes claimant would not speak with a representative and would hang up. During the week of October 21, 2021 through October 26, 2021, Ms. Brooks found that claimant had over 30 calls to the technology connect hotline that totaled over 300 minutes. During each of these phone calls claimant did not speak to a representative. Ms. Brooks found that from October 21, 2021-December 2, 2021, claimant had over 2,016 minutes that she waited on the technology connect hotline without speaking with a representative.

When employees have technology issues they are supposed to notify their manager of the technological issues and see if the manager can help them troubleshoot the problem. If the manager cannot help them then they are supposed to call the technology connect hotline. Claimant denied that she was call avoiding but was instead having computer issues. Claimant denies that she knew that she was supposed to contact her manager when she was having technology issues. Claimant acknowledges that she received a verbal warning about her avoiding calls.

When Ms. Brooks discovered claimant's calls to the technology connect hotline she referred it to human resources for review on December 2, 2021, to determine if it was call avoidance. On December 17, 2021, human resources made a determination not to coach claimant on the call avoidance but to terminate her for her poor performance. Claimant was terminated for violating the employer's performance policy and their professionalism policy. Part of her poor performance was her call avoidance. Claimant acknowledges that she was aware of the employer's performance and professionalism policy.

## **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 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 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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (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.*

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 employer's version of events to be more credible than the claimant's recollection of those events. The claimant testified that she had technological issues and that is why she would call the technology connect hotline. However, claimant did not have any help tickets to verify her technology issues to justify being on the hotline for 2,016 minutes without speaking to a representative to get help. Additionally, claimant could not testify with specificity regarding the issues she was experiencing. Claimant testified that she had to get a new computer due to her computer issues. However, she received the new computer in 2020. The period in question was October 21, 2021-December 2, 2021. The administrative law judge finds claimant's testimony was not credible.

In this case, the claimant deliberately disregarded the employer's interest when she avoided taking phone calls and sat on a hotline for 2,016 minutes with no intent of getting technological

help. The employer has presented substantial and credible evidence that claimant intentionally avoided calls. This is disqualifying misconduct.

**DECISION:**

The January 25, 2022, (reference 01) 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.



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Carly Smith  
Administrative Law Judge

March 31, 2022  
Decision Dated and Mailed

cs/mh

**NOTE TO CLAIMANT:** This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.