

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAYLA HOFFMAN
Claimant

RUSSELL CELLULAR INC
Employer

APPEAL 24A-UI-03362-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/03/24
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge from Employment

STATEMENT OF THE CASE:

On March 27, 2024, claimant Kayla Hoffman filed an appeal from the March 25, 2024 (reference 01) unemployment insurance decision that denied benefits, determining claimant was discharged on March 7, 2024 for violating a known company rule. The Unemployment Insurance Appeals Bureau mailed notice of the hearing on March 29, 2024. Administrative Law Judge Elizabeth A. Johnson held a telephonic hearing at 8:00 a.m. on Friday, April 19, 2024. Claimant Kayla Hoffman personally participated. Employer Russell Cellular Inc. participated through Marisa Maldonado, Employee Services Manager. Claimant's Exhibits A, B, and C were received and admitted into the record without objection.

ISSUE:

Whether claimant was separated from employment due to disqualifying, job-related misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment with Russell Cellular Inc. on September 6, 2022. She worked full-time hours as a wireless specialist in the employer's Fairfield Verizon store. Claimant's employment ended on March 7, 2024, when the employer discharged her for violating company standards during an online Facebook interaction.

On Sunday, March 3, claimant posted in the "Fairfield Iowa" Facebook group that the Verizon store in Fairfield was open on Sundays. (Exhibit A) A woman commented that she was a former customer and had a bad experience with Verizon's service. Claimant responded to her, telling her that she did not need to be nasty and telling her to have a "blessed day." The woman responded, and claimant and the woman began a back-and forth, leading claimant to write: "Get on your knees and pray to the imaginary sky ghost and leave me the hell alone, Karen." This was followed by a "kissy face" emoji. Later in the thread, claimant wrote, "Don't come in anymore, don't have our service, if you have a bad review report it to HR."

Maldonado learned about claimant's Facebook interaction when someone from the community reported it to the employer. The person who had reported it had identified claimant as an employee and wanted to alert the employer to how she was representing the employer. When Maldonado received the report, she reached out to the district sales manager. Management

determined claimant would be discharged due to her violation of the social media policy and her poor representation of the employer in public.

The employer has a social media policy in its employee handbook. This policy generally prohibits employees from publicly posting negatively about the employer. The employer gives employees access to the employee handbook upon hire, either in paper or online form, though claimant may have signed off agreeing to follow the policies in the handbook without reviewing the handbook.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for disqualifying, job-related misconduct. Benefits are withheld.

Iowa Code section 96.5(2)(a) and (d) provide:

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 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...

d. For the purposes of this subsection, "*misconduct*" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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 even 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. Misconduct by an individual includes but is not limited to all of the following: ...

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

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).

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. 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). Misconduct serious

enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer’s interests. *Henry v. Iowa Dep’t of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). 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).

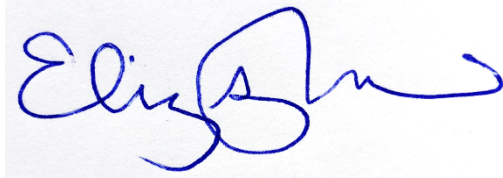
It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party’s case. *Crosser v. Iowa Dep’t of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). 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 I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find it believable that claimant did not receive a physical copy of the employee handbook, but she exaggerated the difficulty of accessing a handbook. I do not believe claimant attempted to access the handbook until after she had been discharged. I believe Maldonado’s testimony that claimant wrote the comments: “Get on your knees and pray to the imaginary sky ghost and leave me the hell alone, Karen” followed by a “kissy face” emoji; and “Don’t come in anymore, don’t have our service, if you have a bad review report it to HR.” Claimant wrote these comments in a public group for the Fairfield, Iowa community where her employer operates. Though claimant’s initial post about the store’s hours did not clearly identify her as an employee, her later statement about “our” service directly links her to the employer.

Claimant’s post in a public Facebook group about the employer’s Sunday store hours turned into a problematic thread in which she denigrated a customer, calling her a “Karen,” insulting her, and casting her aside as a patron of the business. Her attitude was disrespectful toward the customer and her comments identified her as an employee of the Verizon store in Fairfield. Claimant’s behavior violated the employer’s social media policy and also demonstrated a deliberate violation of the employer’s standards of behavior, standards they reasonably expect an year-plus employee to understand and follow when engaging with the public on their behalf. The employer has established claimant was discharged for disqualifying, job-related misconduct. Benefits are withheld.

DECISION:

The March 25, 2024 (reference 01) unemployment insurance decision is affirmed. The employer discharged claimant from employment due to job-related misconduct. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Elizabeth A. Johnson
Administrative Law Judge

April 22, 2024
Decision Dated and Mailed

lj/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.