

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SONIA F VILLALBA
Claimant

FAWN MANUFACTURING INC
Employer

APPEAL 17A-UI-05283-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/30/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 18, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment for insubordination. The parties were properly notified of the hearing. A telephone hearing was held on June 5, 2017. The claimant, Sonia F. Villalba, participated and was represented by Laura Jontz, Attorney at Law. The employer, Fawn Manufacturing, Inc., participated through Mark Donahue, Plant Operations Director; and Bryan Peavey, Welding Manager. Spanish/English interpreter Desiree (ID #6494) from CTS Language Link provided translation for the hearing.

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 full time, most recently as an Assembler, from April 4, 2011, until May 4, 2017, when she was discharged for insubordination. On May 2, claimant was called into the office and given a disciplinary action. Donahue testified that claimant was handed a copy of the write up. Both Donahue and Peavey testified that claimant threw the write-up on the floor. Claimant was asked to pick up the piece of paper, and she replied, "No, you pick it up." Claimant then left the office. Claimant was discharged two days later for refusing to pick up the paper. Donahue testified that claimant was communicating in English that day, and he regularly conversed with claimant in English without issue. During the hearing, it appeared that claimant understood English. On multiple occasions, she started answering a question after it was asked in English and before the interpreter translated the question into Spanish.

Claimant provided a different account of the events on May 2, 2017. She testified that when she returned from her break, her supervisor, Juan, told her that the employer was looking at her on the cameras. Next, claimant was told to come into the office. Claimant believed Juan was going to come along and translate, but he did not. Peavey entered the office with the warning document and told claimant that she was not doing her job. Claimant testified she told Peavey

that she disagreed and would not sign the write-up. Either when Peavey was holding the write-up or when he was trying to hand it to claimant, a piece of paper fell on the floor. Peavey began angrily demanding, "Pick it up, pick it up." Claimant froze, because Peavey was angry and seemed violent. Claimant does not remember saying that she would not pick up the paper. Claimant then left the office and returned to her work station. Claimant admits that she did not ask for an interpreter. She testified that if she had asked for an interpreter, the employer would not have provided one for her.

REASONING AND CONCLUSIONS OF LAW:

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

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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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 law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* 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 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, 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 credible. Simply, the employer's version of events makes sense. In contrast, claimant's testimony was not reasonable. The administrative law judge does not believe Peavey would begin yelling at claimant to pick up a piece of paper that she did not drop. The employer has presented substantial and credible evidence that claimant refused to follow a simple instruction that was given to her. Claimant's refusal to pick up the write-up off the floor amounts to insubordination, which is disqualifying misconduct even without prior warning. Benefits are withheld.

DECISION:

The May 18, 2017 (reference 01) unemployment insurance decision is affirmed. 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn