

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RUSSELL J GRUELKE
Claimant

GMT CORPORATION
Employer

APPEAL 16A-UI-00384-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/20/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 6, 2016 (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on February 1, 2016. The claimant participated personally. The employer participated through William Kinard, Human Resources Manager.

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: The claimant was employed full time as a team leader and was separated from employment on December 18, 2015; when he was discharged.

The final incident occurred when the employer received an anonymous message on its human resources phone line, alerting the employer to the claimant using his cell phone during work to access Facebook. The message triggered the employer to investigate and it discovered during the one-week period of December 14 through 18, 2015 that the claimant had posted or replied to messages on Facebook about ten times a day, all while clocked in and being paid. As part of the employer's investigation, it was confirmed the claimant was not at a scheduled break or lunch when making a post.

The employer has a policy that prohibits personal cell phone use on the floor and limits phone use to break times. The employer also has a policy that prohibits conduct that detracts from business operations. The claimant was made aware of the policies upon hire. The claimant asserted at the hearing he believed he was entitled to a warning for the conduct and not discharge. Based on the fact the employer was behind on production orders and in light of the excessiveness of posting revealed in an investigation limited to one week, the claimant was discharged without prior warning.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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.*

Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. The claimant worked in the capacity as a team leader, and as such, would be reasonably held to a higher standard, as he was in a leadership role. The claimant should have been setting a positive example, promoting the employer's best interests. Instead, the claimant repeatedly used his personal cell phone to access Facebook while clocked in and being paid wages by the employer. In the one-week period that the employer checked the claimant's Facebook, he made approximately ten posts a day while on the clock; as the employer verified the claimant's break and lunch times each day did not coincide with posts. The employer also reported it was behind on production so the claimant's actions were not being performed in down or slow times.

The claimant's testimony that he believed he was entitled to a warning instead of discharge, is indicative that the claimant knew or should have known his conduct was in disregard of the employer's interests and reasonable standards of behavior that the employer has a right to expect of its employees. Work-connected misconduct as defined by the unemployment insurance law has been established in this case. Accordingly, benefits are withheld.

DECISION:

The January 8, 2016 (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 he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

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