

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WALTER COX
Claimant

JG RESTAURANTS INC
Employer

APPEAL 17A-UI-08381-JP
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/23/17
Claimant: Appellant (5)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 7, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. An in-person hearing was held at 1000 East Grand Avenue in Des Moines, Iowa on September 1, 2017. Claimant participated. Employer participated through general manager Daniella Clark. Employer Exhibit 1 and 2 were admitted into the record with no objection. Official notice was taken of the administrative record, including claimant's benefit payment history and wage history, with no objection.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a team crew member from August 2015, and was separated from employment on July 15, 2017, when he was discharged.

The employer has a progressive disciplinary policy that provides employees are discharged if they receive four write-ups (warnings). Claimant was aware of the disciplinary policy.

On July 15, 2017, claimant was scheduled to work from 11:00 a.m. to 3:00 p.m. Employer Exhibit 1. Claimant's schedule had been set and posted on July 7, 2017. The employer posts the schedule on the wall near the kitchen. Claimant's schedule had not been changed since July 7, 2017. On July 15, 2017, claimant clocked out at 2:06 p.m. and started to leave. Employer Exhibit 1. Ms. Clark asked claimant where he was going. Claimant told Ms. Clark that he was leaving because his shift ended at 2:00 p.m. Ms. Clark told claimant that his shift did not end until 3:00 p.m. Claimant told Ms. Clark he had a picture on his phone that he worked until 2:00 p.m. and the schedule must have been changed. Claimant showed Ms. Clark

and the administrative law judge the picture on his phone that he was referring to during the appeal hearing. Claimant mistakenly thought another employee's shift from 11:00 a.m. to 2:00 p.m. was his shift. Claimant's scheduled shift (11:00 a.m. to 3:00 p.m.) was below that employee's schedule. Employer Exhibit 1. Ms. Clark told claimant he could clock back in and work the rest of his shift. Claimant told Ms. Clark no, he has a picture that shows he was to only work until 2:00 p.m. and he had stuff to do. Ms. Clark told claimant she did not change his schedule. Claimant told Ms. Clark that he was not going to clock back in. Ms. Clark told claimant that if he leaves before the end of his shift he would be fired. Claimant then left the employer before the end of his shift.

On July 5, 2017, claimant received two written warnings for two separate incidents that the employer stated occurred on June 31, 2017 (it is noted that there are only 30 days in June). Employer Exhibit 2. When the employer gave claimant his warnings, the employer told him if he received another warning he would be discharged for having more than three warnings. One the warnings claimant received was for taking a smoke break without asking a manager for approval. Employer Exhibit 2. Claimant was giving the other warning for yelling at Ms. Clark when she asked him why he was late and had not contacted the employer prior to the start of his shift. On October 10, 2016, claimant received a written warning for leaving prior to the end of his shift. Employer Exhibit 2.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit, but was discharged from employment due to job-related misconduct. Benefits are denied.

It is the duty of an administrative law judge and 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, as the finder of fact, 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). 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 evidence you believe; 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibits admitted into the record. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

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 of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). 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).

An employer is entitled to expect its employees to work their shifts as scheduled. On July 7, 2017, the employer posted claimant's schedule, which scheduled him to work from 11:00 a.m. to 3:00 p.m. on July 15, 2017. On July 15, 2017, claimant clocked out of work at 2:06 p.m. and started to leave; however, Ms. Clark stopped him because he was scheduled to work until 3:00 p.m. Employer Exhibit 1. Although claimant may have mistakenly thought he was only scheduled until 2:00 p.m. (claimant was looking at another employee's scheduled shift), Ms. Clark clearly stopped him before he left and clearly told him he was scheduled to work until 3:00 p.m. Ms. Clark credibly testified that she then gave claimant the option to clock in and work his remaining shift, but claimant refused. Ms. Clark informed claimant that if he left before the end of his shift he would be discharged. Claimant refused to clock back in and he left before the end of his shift. Claimant had three prior disciplinary warnings and had been informed on July 5, 2017 that one more disciplinary warning would result in discharge. Furthermore, claimant had previously been warned for leaving work before the end of his shift. Employer Exhibit 2. The employer has presented substantial and credible evidence that claimant refused

to listen to his general manager's instructions to not leave before the end of his shift after having been warned. This is disqualifying misconduct. Benefits are denied.

DECISION:

The August 7, 2017, (reference 01) unemployment insurance decision is modified with no change in effect. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs