

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DEZZERA L WILD
Claimant

VON MAUR INC
Employer

APPEAL 17A-UI-01046-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/08/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 26, 2017, (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 17, 2017. The claimant participated personally. The employer participated through Holly Sutton, assistant manager. Department Exhibit D-1 was admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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 merchandise processor and was separated from employment on January 10, 2017, when she was discharged for falsification of company records.

When the claimant was hired, she was trained on the employer's policies and procedures, which state that an employee can be discharged for falsification of company documents. The claimant as a merchandise processor, was responsible for pulling and preparing merchandise to be shipped to retail stores. The employer measures employee production rates by having employees log the time spent on various tasks and the amount of units processed during that time. Employees are supposed to log each day the start and stop times, the units processed and the type of task performed which is then imputed into a formula by the employer to determine their production rate. Employees are expected to retain a certain level of production rate or face discipline. Each month, the employer reviews production rates with employees, and on two occasions (in 2014 and 2016) the claimant had been issued discipline for low production. In addition, on December 1, 2016, the claimant had applied for a new position and was informed by Ms. Sutton that she would need to increase her production rate first.

In response to some open incomplete orders, Ms. Sutton began an investigation to determine which employees or receivers had handled the orders in question. The claimant was able to identify the orders with the employees who serviced them because employees have a unique log in, and scan their orders processed with a “gun” that captures their identity and the order. In investigating the open orders, Ms. Sutton found that on at least seven occasions (December, 5,8,9,14,15 16 and 19) the claimant’s numbers of items processed that she manually entered on her log did not match the number of items she physically scanned. Employees are responsible for tracking the units scanned by keeping scratch paper to document and using a calculator before recording the units. The employer also permits a 2% margin of inflation to account for human error in calculations or miscounting. In the case of the claimant’s log versus her items scanned, there was a 25% increase in production rate from the prior month. Based on the repetitiveness and high rate of error, the employer determined the claimant had purposefully falsified her numbers to boost her production rate. The claimant denied falsifying the logs but suggested that when she had orders with “exceptions”, it could offset the number of items scanned. The employer refuted the claimant’s testimony by stating when exceptions arose, there was an exception button the claimant would push to represent the situation, and in the seven cases at hand, there was no such exception listed. She was subsequently discharged.

REASONINGS AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for reasons that constitute misconduct, and benefits are denied.

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).

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The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

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 witness 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 a current act of work-connected misconduct as defined by the unemployment insurance law.

In this case, the claimant was responsible for recording her start/stop times, tasks and units processed on a manual log. The numbers recorded were then imputed to a computer formula to assess the claimant's production rate. The claimant was aware that low production rate and falsification of company records could result in discipline. The claimant had twice been warned for her low production levels and most recently advised by Ms. Sutton on December 1, 2016 that she needed to boost her production rate to be considered for a new position.

The employer credibly testified that an investigation for an unrelated matter revealed the claimant on seven occasions in December 2016 did not accurately record her units processed, but rather inflated them, which in turn boosted her production rate by 25% percent from the prior month. Persuasive evidence was not presented to justify the 25% boost in production by the claimant or explain the repetitive logging of numbers that did not accurately reflect units touched. The administrative law judge is persuaded that had the claimant encountered exceptions that would have affected her number of units touched, she would have or should have entered an exception code as a flag, and as required by the employer.

Honesty is a reasonable, commonly accepted duty owed to the employer. The administrative law judge is persuaded the claimant knew or should have known her conduct was contrary to the best interests of the employer. Therefore, based on the evidence presented, the claimant

was discharged for reasons that would constitute misconduct, even without prior warning for similar conduct. Benefits are denied.

DECISION:

The January 26, 2017 (reference 01) initial unemployment insurance decision is affirmed. The claimant was discharged for reasons that would constitute 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.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs