

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JENNY SARIN**  
Claimant

**JAARSMA BAKERY INC**  
Employer

**APPEAL 17A-UI-10323-JCT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/17/17**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 6, 2017, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 25, 2017. The claimant participated personally. The employer participated through Kristi Balk, owner. Employer Exhibits 1 through 4 were admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. 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 sales manager and was separated from employment on May 4, 2017, when she was discharged for walking off the job.

The claimant last performed work on May 4, 2017, which coincided with the employer's busiest day of the year, due to it being Tulip Time in Pella, Iowa. The employer had utilized 12 clerks to cashier, to keep up with customer need, which included the claimant, another manager, and some subordinates. The claimant believed two clerks were not helping and notified owner, Kristi Balk. She became very upset. The claimant felt since she was a manager, she had the authority to direct employees and that Ms. Balk "did not have my back". She did not agree with Ms. Balk's handling of the staff that morning. The claimant went to the back and yelled and argued with Ms. Balk, to the point that Ms. Balk asked the claimant to go take a few minutes break to cool down and return to the registers.

The claimant went outside where she "cried hysterically" before deciding to leave for the day. The claimant was not instructed to leave. She did not inform the employer she was not

returning from the break. She simply took her bike and left the premises, in the middle of her shift. Once cooled down and home, she did not notify Ms. Balk that she would not be back.

Prior to separation, the claimant had missed 12 days of work in 4 months of 2017, and 38 days in 2016, due to unplanned absences. She had been warned for her attendance. The employer also had a written policy that outlined employees must return to work promptly from breaks and the claimant was aware of the employer policy. On May 5, 2017, the employer was closed. On May 6, 2017, the claimant texted Ms. Balk to state she had a migraine headache. Ms. Balk informed the claimant that due to her conduct of leaving mid-shift and not returning on May 4, 2017, she had been discharged.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

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).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). 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 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.

In this case, the claimant was discharged after abandoning her shift on May 4, 2017, which is also the employer’s busiest day of the year. An employer has the right to allocate personnel in accordance with the needs and available resources. *Brandl v. Iowa Dep’t of Job Serv.*, (No. \_\_\_/\_\_\_-\_\_\_, Iowa Ct. App. filed \_\_\_, 1986). The reason the claimant left was she was “hysterically crying” after feeling Ms. Balk would not support or back her up regarding an issue with clerks not cashing that day. The claimant argued and cried and yelled at Ms. Balk before being told to cool off and come back to the registers. The claimant failed to report back and left the employer without permission. The claimant had been previously warned for other attendance matters.

The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer’s request in light of all circumstances and the employee’s reason for noncompliance. *Endicott v. Iowa Dep’t of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985). The claimant worked in the capacity as a sales manager, and as such, would be reasonably held to a higher standard, as she was in a leadership role. The claimant should have been setting a positive example, upholding the employer’s policies and promoting the employer’s best interests. Based on the evidence presented, the administrative law judge concludes the employer’s directive to the claimant to take a break to collect herself and return to the sales floor to cashier was reasonable under the

circumstances, as was Ms. Balk's authority as owner to allocate staff as she saw fit. The claimant failed to provide credible evidence for noncompliance in light of the employer's request. The claimant knew or should have known abandoning her shift after an emotional outburst, on the employer's busiest day of the year, was contrary to the best interests of the employer, and could lead to discharge. The employer has established the claimant was discharged for misconduct, and benefits are denied.

**DECISION:**

The October 6, 2017, (reference 02) decision is affirmed. The 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.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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