

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

HALEY K JUNGLING
Claimant

APPEAL NO: 18A-UI-10742-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOTTLES TWO BACKPACKS
Employer

OC: 10/07/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 25, 2018, (reference 01) unemployment insurance decision that denied benefits based on her separation from this employer. The parties were properly notified about the hearing. A telephone hearing was held on November 19, 2018. The claimant participated personally. The employer participated through Valerie Rhoads. The employer listed seven additional witnesses when it registered for the hearing but elected not to call them to participate.

Claimant Exhibit A was admitted. 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 daycare provider/teacher for two-year olds and was separated from employment on October 10, 2018, when she was discharged.

When the claimant was hired, she was trained on employer rules, which prohibit cell phone use during work hours. The undisputed evidence is the claimant received multiple verbal warnings or via text message for cell phone usage, as well as being late and failure to complete duties.

On October 8, 2018, in response to employees continuing to use their cell phones, Ms. Rhoads instituted a new policy regarding cell phones, and told employees they must be stored in her office during shifts. This change was communicated verbally to employees, including the claimant. On October 8 and 9, 2018, the claimant complied with the employer policy and stored her phone in the office as required. On October 10, 2018, the claimant did not store her phone in the office when she arrived to work. When asked about her cell phone for storage, the claimant stated she had left it at home that day. This was not a true statement. The claimant had brought her cell phone to work and chose to turn it off and store inside her purse.

Later that day, a co-worker asked the claimant to retrieve their cell phones from the office. The claimant retrieved her co-worker's cell phone and her own from her purse. The co-worker reported the claimant to be text messaging on her phone thereafter. The claimant opined the co-worker was also on her cell phone.

Upon learning the claimant had in fact brought her phone to work after telling Ms. Rhoads it was at home, she was discharged. In the text messages about the discharge, Ms. Rhoads repeatedly told the claimant she had been dishonest and lied.

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 law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

“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 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 employer operates a childcare facility and the claimant was personally responsible for supervising two-year old children. This would reasonably require her to be attentive, and being distracted by a personal cell phone would not allow her to fully perform her job duties and could even place children in harm. As such, the employer had a reasonable policy, which the claimant was made aware of, that restricted personal cell phone use when working. When Ms. Rhoads became concerned about continued cell phone use with employees, she further restricted access to cell phones by requiring employees to store their cell phones in her office during their shifts. The claimant knew of this rule and abided by it October 8 and 9, 2018. However, the claimant lied to Ms. Rhoads about leaving her phone at home on October 10, 2018, when she in fact had it on the premises. The claimant purposefully and willfully was dishonest to the employer. She was further reported by another employee of using the phone that day, also violating employer policy.

Honesty is a reasonable, commonly accepted duty owed to the employer. In light of being entrusted to care for small children, the administrative law judge believes trusting employees is crucial to the employer's business. The administrative law judge is persuaded the claimant knew or should have known her conduct of being dishonest to Ms. Rhoads on October 10, 2018 was contrary to the best interests of the employer. Therefore, based on the evidence presented, the claimant was discharged for misconduct, even without prior warning for dishonesty. Benefits are denied.

DECISION:

The October 25, 2018, (reference 01) 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.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn