

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHELE L QUICK
Claimant

THE CHILDRENS PLACE INC
Employer

APPEAL 16A-UI-10529-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/04/16
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the September 21, 2016 (reference 01) unemployment insurance decision that allowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on October 11, 2016. The claimant, Michele L. Quick, participated personally. The employer, The Children's Place Inc., participated through Regional Manager Laurel Mann.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a District Sales Manager. This employer operates retail clothing stores. Claimant was employed from November 16, 2015 until September 6, 2016 when she was discharged. Claimant's job duties involved supervising eleven stores within her district. Ms. Mann was claimant's immediate supervisor.

As part of claimant's job duties she was to conduct audits of the stores that she is in charge of supervising. Part of the audit process involves visiting the stores in person to determine whether or not the stores are complying with the employer's standards. As part of the audit process, claimant answers several questions about the stores that she visits.

Claimant completed her store audits in July of 2016. This was not the first time she had prepared audits for the stores that she supervises. Out of the eleven stores that claimant supervised, she conducted three of the audits by telephone with the respective store managers. She did not visit the stores in person to complete the audits. Many of the questions in the audit process involved claimant reviewing the onsite premises at each store location, requiring her personal presence. Claimant did not consult with her supervisor on whether or not she could

have an extension of time to complete the audits. Claimant completed the audits and represented that she visited the stores personally.

In September of 2016, two of the three store managers noticed that audits were completed without the claimant personally visiting the stores. These two store managers reported this occurrence to Ms. Mann. Ms. Mann and two other personnel conducted an investigation into the matter. Claimant admitted that she did not personally visit the three stores which she turned in paperwork stating that audits had been completed.

Claimant was discharged for falsification of documents. The employer has a written policy which states that falsification of documents subjects an employee to immediate discharge. Claimant did not receive a copy of this written policy but had access to the policy via the employer's on-line system.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for job-related misconduct. Benefits are denied.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Further, 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). 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. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). 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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.* 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). Further, 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).

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.* After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds that Ms. Mann's testimony is more credible than claimant's testimony.

This is not simply a case of negligence or poor work performance. Claimant knew that the audits required her physical presence at the store location in order to be completed. This was because several of the questions that claimant had to answer in the audit involved her visual inspection of the store premises. Claimant intentionally completed these audits without visiting the stores personally. She then turned in documentation which represented that she had visited the stores personally.

There is substantial evidence in the record to support the conclusion that claimant deliberately violated the employer's written policy regarding falsification of documents. Claimant did this for not one, but three, separate stores. Claimant's continued actions of failing to follow the employer's policy against falsification of documents on three separate occasions constitutes an intentional and substantial disregard of the employer's interest and is indicative of a deliberate disregard of the employer's interests. This rises to the level of willful misconduct, even without prior warning. Benefits are denied.

DECISION:

The September 21, 2016 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Benefits are withheld in regards to this employer until such time as claimant is deemed eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

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