

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**MICHELLE F RICHERS**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL NO. 21A-UI-00820-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/06/20**  
**Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated November 23, 2020, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 11, 2021. Claimant participated personally and with witnesses Lindy Killean, and Nancy Biechler. Employer participated by hearing representative Barbara Buss with witnesses Kim Stevens, Maggie Phelps, and Brian Mertes.

**ISSUE:**

Whether claimant was discharged for misconduct?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on August 29, 2020. Employer discharged claimant on August 29, 2020 because claimant allegedly engaged in creating a hostile workplace for her coworkers and conduct against the ethos of employer after repeated warnings.

Claimant worked as a part time pharmacy clerk for employer. For years she received positive reviews as was a very hard worker. Employer stated that at or around the beginning of 2020 her attitude changed. Claimant started getting very upset that a coworker got different benefits that claimant did not believe she deserved. Claimant would complain about one coworker to other coworkers and to her supervisor. On two occasions claimant was told by her supervisor and given warnings not to speak of coworkers and invite conflict. These warnings occurred in late February and early July, 2020. The July warning was a final warning where claimant was alerted that additional actions could lead to termination.

In August 2020 the derecho struck the area near where claimant worked, and another Hy-Vee was forced to combine their pharmacy with the pharmacy where claimant worked. Claimant came into work to find that typeset had been changed on pharmacy orders to allow for the larger amount of orders to be printed. Employer said this frustrated claimant and she started

complaining loudly about the changes. Employer said that claimant would not stop complaining for a period of hours and raised her voice shouting to the pharmacy manager in front of customers. The pharmacy manager said that she could not calm claimant down. Employer read into the record the statements of two other coworkers who found claimant's actions to be completely out of line.

The manager decided to proceed forth with discipline towards claimant. On August 29, claimant met with the pharmacy manager and store manager to discuss discipline. The store manager was going to suspend claimant for a week for her actions. At this meeting, claimant was belligerent and rude and would not listen. The store manager made the decision to terminate claimant.

Claimant admitted that she'd received two warnings from employer concerning claimant's complaints about a coworker. Claimant believed that she was being pushed out of her job because of her complaints. Claimant stated that employer was overstaffed and they wished to get rid of claimant because of claimant's concerns about a coworker getting special, undeserved benefits. Claimant denied that she did anything inappropriate on August 27 or 29 that would lead to her termination.

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

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

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 Ct. 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*, 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. *State v. Holtz*, Id. In this matter, employer's witnesses are deemed more credible as claimant flat out denied the two incidents that led to her termination – the incidents of August 27 and the incident at the meeting of August 29. This is not credible, especially in light of the number of witnesses to the incidents.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning respectful treatment of coworkers. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant knew she needed to improve upon her treatment of coworkers, but on August 27, 2020 became publicly and loudly frustrated for an extended period of time as a result of a change employer put into place in the typeset of documents. This is not a reasonable response, and claimant continued being unreasonable when addressed on August 29, 2020. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

**DECISION:**

The decision of the representative dated November 23, 2020, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



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Blair A. Bennett  
Administrative Law Judge

February 23, 2021  
Decision Dated and Mailed

bab/mh