IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

DOUGLAS W PETTEPIER Claimant **EMPLOYERS MUTUAL CASUALTY CO** Employer	**APPEAL 18A-UI-10485-DB** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 09/16/18** **Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the October 11, 2018 (reference 01) unemployment insurance decision that found the claimant was not eligible for unemployment insurance benefits based upon his discharge from employment. The parties were properly notified of the hearing. An in-person hearing was held on November 7, 2018 in Des Moines, Iowa. The claimant, Douglas W. Pettepier, participated in person. Maryellen Pettepier attended the hearing with the claimant. The employer, Employer's Mutual Casualty Co., participated via telephone through witnesses Amanda Easton, Tom McEntee and Julie Larson. Attorney Maggie White represented the employer. Employer's Exhibits 1 through 4 were admitted.

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:

Claimant was employed full-time as an application system supervisor. Claimant began his employment on July 25, 1988. He was discharged from employment on March 8, 2018. Claimant's direct supervisor was Tom McEntee. Amanda Easton is the talent management supervisor. Julie Larson is the vice president of application and director of information technology.

Claimant became a supervisor in April or May of 2015. He supervised approximately 12 employees. One of the employees that he supervised was Sam Groehn. She was an application developer II.

In July of 2017, Ms. Groehn parked her bicycle in an area that it was not allowed to be in and in a way that it could have dropped on another vehicle. Ms. Larson discussed with claimant that Ms. Groehn needed to move the bicycle immediately. Claimant defended Ms. Groehn commenting that she probably had her bike parked there prior to the vehicle parking underneath it. Ms. Larson told claimant that was "the wrong answer" and that she needed to move her bike

immediately. Ms. Groehn had also sent emails to co-workers who were responsible for the bicycle racks that may have been construed as being rude or harassing. Claimant determined that no discipline was warranted for Ms. Groehn's activities regarding the bicycle incident. Claimant had discussed his conclusion in not proceeding with discipline against Ms. Groehn with Mr. McEntee. Mr. McEntee did not tell him his conclusion was wrong or inappropriate at the time.

On December 19, 2017, Mr. McEntee discussed with claimant allegations from another employee that he was favoring Ms. Groehn at work because the two were friends outside work. Claimant and Ms. Groehn were friends outside of work. The two would walk their dogs together on occasional weekends; Ms. Groehn played on a soccer team with the claimant's two children; Ms. Groehn had been to the claimant's house to spend time with him and his family; and both had been on the same tournament team at a local bar where they had drank alcohol together. Mr. McEntee discussed with the claimant that this behavior was viewed by at least one other team member as favoritism towards Ms. Groehn. There was no written documentation of the meeting. Claimant did not consider this to be a disciplinary meeting but Mr. McEntee did.

In February of 2018, Ms. Groehn's ex-boyfriend contacted the employer and reported that claimant and Ms. Groehn were having an inappropriate relationship. Prior to this report, claimant had assisted Ms. Groehn in moving her ex-boyfriend out of her residence. Claimant had contacted the police and had travelled to Ms. Groehn's residence with his wife, Maryellen Pettepier, to escort her ex-boyfriend from her residence. Claimant was concerned with potential domestic violence by the ex-boyfriend and he had concerns that the ex-boyfriend had access to weapons.

When Ms. Easton became aware of the allegations of Ms. Groehn's ex-boyfriend, she began an investigation. Ms. Easton interviewed claimant and asked if he and Ms. Groehn had a relationship outside of work. Claimant denied having a relationship with Ms. Groehn at first because he believed Ms. Easton was referring to a sexual relationship. After Ms. Easton asked him additional questions, he told her that the two did spend time together outside of work hours. He gave Ms. Easton examples of the type of activities the two did together outside of work hours. Ms. Easton believed that claimant was providing misleading information regarding their relationship outside of work. See Exhibit 2 listing "knowingly providing a misleading response during an investigative process…" as an area of improvement.

Claimant was distraught after this meeting with Ms. Easton and spoke to Mr. McEntee, to whom he expressed concerns that he did not intentionally try to mislead Ms. Eason, but that he believed she was inquiring about a sexual relationship, which did not exist. Claimant asked Mr. McEntee if he could be taken out of his supervisor role. Mr. McEntee stated that he wanted him to remain the supervisor.

On March 6, 2018, claimant received a written warning. See Exhibit 2. The warning stated that claimant demonstrated poor judgment as a supervisor in his interactions with Ms. Groehn. See Exhibit 2. The following areas were noted as needing improvement: knowingly providing a misleading response during an investigation process to avoid accountability, behavior which is inconsistent with the expectations of the honesty and integrity competency; demonstrating inappropriate boundaries with a direct report and failing to appropriately reflect on past mistakes, behavior which is inconsistent with the expectation of the self-awareness competency; and failing to recognize that engaging in behaviors that result in negative team morale is disruptive to leading productive teams, behavior which is inconsistent with the expectation of the ensuring accountability competency. See Exhibit 2. The written warning provides that the expectation for a supervisor is that you will demonstrate objectivity and not

become so involved personally with direct reports that you are unable/unwilling to provide honest, accurate and timely feedback. See Exhibit 2. Because of the written warning given on March 6, 2018, claimant was instructed that Ms. Groehn would be moved out of his department and he would no longer be her supervisor, effective the following week. Claimant was aware that his job was in jeopardy at this time.

The employer has a written policy in place regarding conduct and behavior in the workplace. See Exhibit 3. Claimant had received a copy of the written policy. The policy provided that "EMC employees are expected to conduct themselves in a professional and businesslike manner at all times. You are expected to offer courteous and efficient service to others in all of your interactions whether it is with co-workers or outside contacts and to treat everyone with respect." See Exhibit 3.

On March 7, 2018, claimant and Ms. Groehn proceeded to have wellness checks completed. The two had scheduled the wellness check appointments with the employer several days prior to the March 6, 2018 written warning. The employer encourages employees to have wellness checks completed during work hours on work premises.

When Ms. Groehn arrived at the wellness center, the staff did not have her appointment on their schedule. Ms. Groehn had received emails confirming her appointment so she became negative towards Atalie Ferring, the main screener, when she was told her appointment was not found on the list. See Exhibit 1. Ms. Groehn stated "what a great way to start the day" and "I've been getting emails I have to be on the list" to the main screener. See Exhibit 1. Ms. Groehn rolled her eyes and made sighs during the encounter. See Exhibit 1. Ms. Ferring told Ms. Groehn, "Everything is going to be okay. It's no problem. We'll get you in this morning. Go ahead and take a deep breath." See Exhibit 1.

After the claimant and Ms. Groehn had their screenings completed, Erinn Waltz reported that Ms. Groehn turned to claimant and stated loudly and sarcastically, "oh, take a deep breath, everything is going to be okay" in a way that mocked Ms. Ferring's previous statements. Megan Pope, who is a wellness specialist, then approached Ms. Groehn and stated that "this all needed to stop" and that Ms. Groehn needed to treat the screeners and staff with more respect.

Claimant then responded to Ms. Pope that Ms. Groehn was rude because she wasn't on the list. See Exhibit 1. Ms. Pope responded to claimant, "it's OK when that happens because we can accommodate everyone to get into a screening and it is not OK to talk to people that way". See Exhibit 1. Ms. Groehn then turned to claimant and asked, "is she serious?" and at that time claimant started laughing. See Exhibit 1. Ms. Pope then responded to claimant "as a supervisor you shouldn't think this is funny. You have an employee treating people with disrespect." See Exhibit 1. Claimant did not discipline Ms. Groehn for her behavior at the wellness center.

This encounter was reported to Ms. Easton, who interviewed witnesses and took witness statements. Claimant was discharged on March 8, 2018 for this final incident at the wellness center.

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.

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 the witness statements in Exhibit 1 are credible as it relates to the incident on March 7, 2018. Claimant testified that he did not remember some of the statements listed in Exhibit 1; however, there was no motive for any of the witnesses listed in Exhibit 1 to fabricate or embellish the incident on March 7, 2018.

When determining whether the claimant is eligible for unemployment insurance benefits based upon a discharge from employment, 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).

On March 7, 2018, claimant completed his wellness check at the same time as Ms. Groehn, even though the employer had previously warned him the day prior that he should not become so involved personally with direct reports that he would be unable or unwilling to provide honest, accurate feedback regarding problematic behaviors of direct reports. Claimant then affirmatively defended Ms. Groehn's rude and inappropriate behavior at the wellness center with other co-workers because she was not on the list initially. Claimant then laughed when Ms. Groehn continued to be disrespectful towards co-workers.

Working with close friends can pose unique challenges in the workplace, where the lines of professional and personal relationships understandably can become blurred. Such was the case here between the claimant and Ms. Groehn. However, when claimant became her supervisor it became his responsibility to distance himself in such a manner so that he could act objectively and appropriately with Ms. Groehn in the workplace. Further, claimant was put on notice on March 6, 2018 when he received his written warning about his friendship with Ms. Groehn that was clearly affecting his ability to objectively manage her as a subordinate.

Claimant's actions in approving of Ms. Groehn's mocking of a co-worker and defending Ms. Groehn's rude behavior with other co-workers on March 7, 2018 was a deliberate act that constituted a material breach of his duties and obligations arising out of his contract of employment. Further, his omission in failing to discipline her for her actions constitutes a material breach of his duties and obligations arising out of his contract of employment.

At the point when claimant became Ms. Groehn's personal advocate, he demonstrated behavior that was clearly a substantial disregard of the employer's interests. To a co-worker, this could reasonably appear to reflect favoritism. Further, this was not a good faith error in judgment, as the claimant was previously warned that he needed to demonstrate objectivity and govern himself in a way that would not affect his ability to manage Ms. Groehn as a subordinate employee.

Accordingly, the employer has met its burden of proof in establishing that the claimant's conduct on March 7, 2018 consisted of deliberate acts that constituted an intentional and substantial disregard of the employer's interests, especially in light of the previous warning the day prior. These actions rise to the level of substantial willful job-related misconduct. As such, benefits are denied.

DECISION:

The October 11, 2018 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Unemployment insurance benefits are denied until claimant has worked in and earned wages for insured work equal to ten times his weekly benefit amount after his separation date, and provided he is otherwise eligible.

_____
Dawn Boucher
Administrative Law Judge

_____
Decision Dated and Mailed

db/rvs