

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DONNA DURING
Claimant

D OF S FOODS INC
Employer

APPEAL 19A-UI-09777-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/10/19
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

On December 10, 2019, Donna During (claimant) filed an appeal from the December 4, 2019, reference 01, unemployment insurance decision that denied benefits based upon the determination she voluntarily quit employment with D of S Foods, Inc. (employer) but failed to provide evidence showing she quit with good cause attributable to the employer. The parties were properly notified about the hearing. A telephone hearing was held on January 8, 2020. The claimant participated personally. The employer participated through Jessica Hamlin, Store Manager. No exhibits were offered into the record.

ISSUE:

Did the claimant voluntarily leave employment with good cause attributable to the employer or did the employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was re-employed full-time as a Crew Member beginning on August 20, 2019, and her last day worked was October 26, 2019. The employer has a drug testing policy on page 31 of its employee handbook. The policy states employees can be drug tested when there is reasonable suspicion. The policy also states that refusing to take a drug test can result in discipline up to and including termination.

Before the claimant reported for her shift on October 26, a co-worker showed Jessica Hamlin, Store Manager, a personal Facebook message they had received from the claimant. In the message, the claimant asked the co-worker to help her with a car issue and offered illegal drugs as payment. The claimant reported for work. Approximately half hour into her shift, a customer notified another employee that they believed the claimant was under the influence. The employee reported the customer's statement to Hamlin. Hamlin had also observed that the claimant was not acting normally. Hamlin asked the claimant to take a drug test or go home if she refused. The claimant refused the drug test and went home.

The claimant believed she needed to speak with another member of management or human resources before returning to work. The employer attempted to reach the claimant but was unsuccessful. The claimant did not report to work or contact the employer as she believed she had been terminated. The employer was dealing with this situation for the first time and wanted to conduct further investigation into the situation. There was continuing work available to the claimant had she reported to work the following day.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not discharged but voluntarily left the employment without good cause attributable to employer. Benefits are denied.

Iowa Code section 96.5 provides, in relevant part:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

...

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).

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.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events.

A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2) (amended 1998). Generally, when an individual mistakenly believes they are discharged from employment, but was not told so by the employer, and they discontinue reporting for work, the separation is considered a quit without good cause attributable to the employer. *LaGrange v. Iowa Dep't of Job Serv.*, (No. 4-209/83-1081, Iowa Ct. App. filed June 26, 1984).

In this case, the claimant did not follow up with management personnel or Human Resources and her assumption of having been fired was erroneous as the employer had not yet decided how to handle the situation. The claimant's failure to continue reporting to work was an abandonment of the job and deemed a quit without good cause attributable to the employer. Benefits are denied.

In the alternative, even if the claimant had been discharged, benefits would still be denied. 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 must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

The employer has an interest in maintaining a drug-free workplace. It has put policies in place prohibiting the use of drugs and requiring drug testing in certain situations. The claimant refused the drug test and was aware that doing so could lead to the end of her employment. The employer would be able to establish that the claimant's conduct was a deliberate or willful

violation of a known company rule. This is disqualifying misconduct even without prior notice. If the claimant had been terminated, benefits would still be denied.

DECISION:

The December 4, 2019, reference 01, unemployment insurance decision is affirmed. The claimant voluntarily left the employment without good cause attributable to employer. 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



Stephanie R. Callahan
Administrative Law Judge

January 9, 2020
Decision Dated and Mailed

src/scn