

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LORENZO J FAISON
Claimant

SIVYER STEEL CORPORATION
Employer

APPEAL 17A-UI-05583-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/30/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 18, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for theft of company property. The parties were properly notified of the hearing. A telephone hearing was held on June 14, 2017. The claimant, Lorenzo J. Faison, participated. The employer, Sivyer Steel Corporation, participated through Jennifer D. Collins, HR Director. The administrative law judge took official notice of the fact-finding documentation.

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, most recently as a welder, from August 1, 2014, until April 20, 2017, when he was discharged. Collins testified that an employee was at a pawn shop and thought he saw the employer's serial numbers on several items. The employee reported this, and in response, Director of Operations Keith Pearl went to the pawn shop. He determined that the employer's serial number was on the items. At that point, Pearl contacted the police. Detectives came to the pawn shop, and they were able to determine that claimant had been the individual who brought the items in and pawned them. The employer did not submit any information on when the items were pawned, when the items were allegedly taken from the employer, or who took the items from the employer's premises. Next, the employer called claimant into the office. Claimant was given and declined an opportunity to give a statement to the police. He was then discharged.

Claimant denies that he took the tools from the employer's premises. He testified that he bought the items online and subsequently pawned them when he needed money. The employer admits that its security had been relaxed during claimant's employment. The tools were kept in a tool room, but this room was not always staffed by an attendant and it was occasionally left unlocked. Additionally, employees routinely left tools at their work stations

when they went to break or lunch. Collins explained that during claimant's employment, the employer had no inventory process so it could track its tools.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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). 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 claimant more credible than the employer. The employer did not provide a firsthand witness who examined the property at the pawn shop or who determined that claimant was the person who pawned the items at issue. Additionally, the employer did not submit any proof that claimant was the person responsible for taking the employer's property.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. Here, the employer has not provided any evidence to support its claim that claimant stole property from the employer. Therefore, it has not met its burden of proving that claimant was discharged for disqualifying misconduct. Benefits are allowed, provided he is otherwise eligible.

DECISION:

The May 18, 2017 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn