

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

MISTIE R CASIANO
Claimant

APPEAL NO: 19A-UI-03810-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HACH CO INC
Employer

OC: 04/14/19
Claimant: Appellant(1)

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

STATEMENT OF THE CASE:

The claimant, Mistie R. Casiano, filed an appeal from the April 30, 2019, (reference 01) unemployment insurance decision that denied benefits based upon the claimant's separation from Hach Co Inc. The parties were properly notified about the hearing. A telephone hearing was held on May 30, 2019. The claimant participated personally. The employer participated through Thomas Kuiper, hearing representative with Talx UCM Services/Equifax Workforce Solutions. Angie Rodenburg and Casey Royer testified for the employer.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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: The claimant was employed full-time as a material handler II and was separated from employment on April 12, 2019, when she was discharged.

When the claimant was hired, she was trained on employer rules and procedures, which included an expectation of honesty. In November 2018, the claimant began a personal leave of absence, which included short-term disability. The claimant was on restrictions from her doctor to not perform any work and was released from restrictions on March 15, 2019, and returned to work for this employer. During the claimant's leave of absence, she began new employment, part-time at Boulder Hotel, but did not inform the employer or the third party administrator of the short-term disability that she was working for the hotel.

The employer utilizes an anonymous hotline for potential work concerns or ethics complaints. The employer received three calls related to the claimant performing work while she was on the

leave of absence/collecting short-term disability. The claimant was interviewed by Ms. Rodenburg about her activities while on the leave of absence and after approximately 40 minutes, the claimant admitted to having worked for the hotel while on the leave of absence. Ms. Rodenburg characterized the claimant's conduct during the interview to be evasive and not forthcoming, and concluded she was dishonest when questioned.

The claimant at the hearing offered multiple explanations for why she was working for the hotel and also how she handled the interview. She indicated she and her doctor agreed to have her work a part-time job to ease into returning to her full-time employer. She stated she had discontinued receiving payments after February 15, 2019 and worked to supplement the income. She also indicated when the payment stopped, she figured she was not employed anymore so she began working. Upon completion of the investigation, the claimant was discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa unemployment insurance law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

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 administrative law judge took into consideration the claimant's inconsistent statements and found the employer's testimony to be more credible than the claimant. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

In this case, the claimant was discharged for being dishonest about obtaining a secondary employer while on short-term disability/leave of absence for her full-time employer. Logically, if the claimant's doctor had not released her to perform work for her regular employer, it would be expected she use the time off to recover and not obtain secondary employment. When the claimant was questioned about her second employment, she was not upfront or forthcoming with information. Honesty is a reasonable, commonly accepted duty owed to the employer. The administrative law judge is persuaded the claimant knew or should have known her conduct was contrary to the best interests of the employer. Therefore, based on the evidence presented, the claimant was discharged for misconduct, even without prior warning. Benefits are denied.

DECISION:

The April 30, 2019, (reference 01) decision is affirmed. The claimant was discharged from employment due to job-related misconduct. 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.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn