

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LUANN D GRAFF
Claimant

GRAFFIX INC
Employer

APPEAL 15A-UI-14071-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/08/15
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Luann Graff (claimant) filed an appeal from the December 11, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination Graffix, Inc. (employer) discharged her for insubordination in connection with her work. The parties were properly notified about the hearing. A telephone hearing was held on January 13, 2016. The claimant participated on her own behalf. The employer participated through Owner/Manager Reid Graff and General Manager Tony Christiansen. Claimant's Exhibits A and B were received.

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 started the employer with her sons, Reid and Brad Graff. In 2006, for personal reasons, the claimant sold her shares of the employer to her sons. In 2008, Reid asked the claimant to return to work as an Embroidery Technician, which she did. In 2014, the relationship among the family members became strained. Ultimately, Brad was removed from the business by court order in early November 2015. Reid then met with General Manager Tony Christensen and they determined the claimant had been insubordinate and made the decision to end her employment on November 12, 2015.

The most recent incident of insubordination occurred on October 29, 2015 when the claimant left her embroidery area during work hours. Prior to Brad's removal, the claimant would report to Brad different issues that arose with the other employees' job performance and was often seen entering or exiting his office when Reid and Christiansen believed she had no business in his office. In May 2015 and June 2015, Christiansen prepared written warnings for the claimant as she would continually leave her work area and submitted them to Brad as he had been directed. Brad did not give the warnings to the claimant. After Brad was removed, Christiansen and Reid did not give the claimant any warnings about her conduct.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and the 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.

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. 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer has argued the claimant was discharged due to insubordination. The claimant has argued she was discharged due to the break down in the relationship between the brothers. 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 the claimant was discharged due to the break down in the brothers' partnership. Brad's removal from the business was the last event that occurred before the claimant's employment was ended. Reid also testified Brad's removal was the event that prompted the discussion and decision to terminate the claimant's employment. Finally, the employer's witnesses were evasive and unable to provide details of recent events of the claimant's alleged insubordination.

The employer made a business decision to remove the claimant from her position due to the strained interpersonal relationships. The employer has a right to end an employment relationship with any employee so long as it is not contrary to public policy. In this case, given the personal relationships, the decision to remove the claimant might be justifiable. However, the employer's business decision without underlying timely acts of misconduct will not disqualify the claimant from receiving unemployment insurance benefits. The employer has not credibly

established that the claimant engaged in timely misconduct as most of the insubordination identified during the hearing occurred in early 2015 and is not considered to be a timely act. Additionally, the insubordination identified had more to do with the interpersonal relationships than it did with her conduct as an employee.

Even if the claimant had engaged in misconduct, an employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. The employer did not notify the claimant it would no longer tolerate her conduct before her discharge. The employer has not established that the claimant engaged in willful or deliberate misconduct or acted with recurrent negligence in violation of company policy, procedure, or prior warning. Accordingly, benefits are allowed.

DECISION:

The December 11, 2015, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/pjs