

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JESSICA I JAMES**  
Claimant

**SLB OF IOWA LC**  
Employer

**APPEAL 19A-UI-03999-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

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

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(1)a – Misconduct

**STATEMENT OF THE CASE:**

On May 15, 2019, the claimant filed an appeal from the May 6, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for engaging in conduct not in the best interest of the employer. The parties were properly notified of the hearing. A telephonic hearing was held on June 20, 2019. The claimant, Jessica I. James, participated. The employer, SLB of Iowa, L.C., participated through witness Cynthia Kapela, District Manager; and was represented by Karen Beard, Human Resources. Claimant's Exhibits A through G and Employer's Exhibits 1, 2, and 3 were received and admitted into the record without objection.

**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 an associate, from November 14, 2016, until April 16, 2019, when she was discharged for attitude and insubordination issues. Claimant is an individual with disabilities. While the employer had notice of these because claimant had provided the employer with copies of various medical records, claimant never worked with Human Resources to request any accommodations.

The final incident leading to the end of claimant's employment occurred on April 16, 2019. That day, claimant arrived at work fifteen minutes early. Claimant asked if she could clock in early, and the manager on duty told her to wait until her scheduled start time to clock in. Claimant then began arguing with the manager on duty, as she had been allowed to clock in early on other occasions. The manager on duty instructed claimant to go sit in the restaurant until it was time for her shift to start. After claimant's shift started, claimant continued to argue with coworkers and her managers. Claimant told another employee, "You're not my manager, you can't tell me what to do." When a coworker said hello to claimant, she replied, "Don't say hi to me like that." At that point, the manager pulled her aside and discharged her.

Claimant was written up on three prior occasions for issues with her attitude. On February 7, 2019, claimant and a coworker got into an altercation over a bus cart. (Exhibit 1) Claimant became “verbally argumentative” with management over this bus cart issue. (Exhibit 1) Claimant was written up for this incident. The coworker involved was sent home for the day. On March 7, 2019, claimant asked to leave early from her shift. The manager instructed claimant to work on some dishes until it was time for her to leave for the day. Claimant became argumentative and had to be asked multiple times to do the dishes before she finally did them. (Exhibit 2) Claimant received a write-up for this incident the following day. (Exhibit 2)

Claimant’s third and final written warning was issued for an incident that occurred on March 26, 2019. Claimant and another employee were engaged in an altercation over some bake pans that claimant was not supposed to wash, per instruction from Kapela. Eventually, the other employee complained to the store manager, Chris. Chris came over, accused claimant of arguing, and told her to wash the pans. Claimant then began arguing with Chris, and when she would not stop arguing, she was sent home. Claimant was aware her job was in jeopardy because of her attitude and insubordination issues.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

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). 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). 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).

This case rests in part on the credibility of the parties. 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 employer's testimony more credible than claimant's testimony. The administrative law judge does not believe that claimant was never argumentative with her coworkers or her managers. Even if the employer flat-out refused to transfer claimant to a different store, the administrative law judge finds that this would not justify claimant's argumentative and obstinate behavior.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. In this case, the employer expected claimant to work successfully with her coworkers and her managers. Claimant was not able to do this. The employer gave claimant numerous warnings for her behavior and notified her that her job was in jeopardy, and claimant's argumentative behavior persisted. The employer has met its burden of proving claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

**DECISION:**

The May 6, 2019, (reference 01) unemployment insurance decision is affirmed. 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.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/rvs