

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

YEVETTE SMITH
Claimant

DES MOINES IND COMMUNITY SCH DIST
Employer

APPEAL 20A-UI-11122-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/10/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant, Yevette Smith, filed an appeal from the August 27, 2020 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 2, 2020. The hearing was continued before testimony began to allow claimant receipt of employer exhibits.

After proper notice, a telephone hearing was conducted on December 9, 2020. Claimant participated personally and subpoenaed Sharon Bell to testify on her behalf. Employer participated through Rhonda Wagoner, benefits specialist. LaShone Mosely, director of transportation, testified. Naki Allen, human resources, also testified.

The administrative law judge took official notice of the administrative records. Employer Exhibits 1-4 and Claimant Exhibit A were admitted.

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 began employment on September 11, 2008. She last physically worked on the job March 13, 2020 and was discharged on May 11, 2020 as A bus attendant working 25 to 30 hours per week.

In its letter for discharge, the employer listed several reasons for discharge, including inefficiency, incompetence or negligence, failure to complete SafeSchool modules and online anger management courses, gross insubordination, gross misconduct, and failure to maintain satisfactory and harmonious relationships (Employer Exhibit 1).

Prior to discharge, claimant was issued a ten-day suspension per employer's progressive discipline policy, for several policy violations (Employer Exhibit 3). Claimant refused to sign the warning, which stated her job was in jeopardy. She wrote "I don't agree" (Employer Exhibit 3). Claimant had also received a documented written warning on November 25, 2019 in response to two incidents involving co-workers (Employer Exhibit 4).

As part of claimant's final warning, she had been instructed to complete SafeSchools modules and also three anger management courses through the Magellan platform (Employer Exhibits 1, 3.). Employer assigned the sessions in response to claimant having conflict with others. Claimant did complete the SafeSchools modules but did not complete the anger management courses by the March 6, 2020 deadline. Claimant was concerned about privacy concerns and HIPAA, based upon her understanding of what would be shared with the school. Her union representative directed her not to complete the classes. Claimant did not raise her concerns with the employer about privacy or why she would not complete the classes prior to discharge.

Employer stated the final incident occurred two days after claimant returned from her ten-day suspension, on February 18, 2020 and was reported to the employer February 20, 2020. While claimant had been on her suspension, a student on her route had been given an assigned seat to prevent behavioral issues. Claimant was unaware of the change that had been made and when the student approached the bus that day, there was conflict as it related to the student's choice of seating. The employer reported claimant engaged in unprofessional conduct with a staff member of the school, referencing she controlled her bus (rather than the staff.) Claimant denied there was a confrontation but acknowledged there was a discussion. Employer did not present any witnesses or statements from the bus driver, or staff member involved.

Employer investigated claimant's failure to complete her courses/counseling and the incident with the staff member on February 20, 2020 and placed claimant on administrative leave. Due to the COVID-19 pandemic and spring break, the investigation and due process meeting took longer than usual to complete. Claimant was subsequently discharged.

Claimant asserted she was targeted by new management, and had raised concerns of unfair treatment before being discharged.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa 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 Administrative Code rule 871-24.32(1)a provides:

"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.* 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 not 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 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 Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

This case rests 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). Administrative agencies are not bound by the technical rules of evidence. *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 630 (Iowa 2000). A decision may be based upon evidence that would ordinarily be deemed inadmissible under the rules of evidence, as long as the evidence is not immaterial or irrelevant. *Clark v. Iowa Dep't of Revenue*, 644 N.W.2d 310, 320 (Iowa 2002).

Hearsay evidence is admissible at administrative hearings and may constitute substantial evidence. *Gaskey v. Iowa Dep't of Transp.*, 537 N.W.2d 695, 698 (Iowa 1995).

In this case, claimant had documented warnings and most recently had been issued a ten-day suspension on February 3, 2020 (Employer Exhibits 3-4). Claimant refused to sign the warnings and stated she did not agree with them. Even if claimant disagreed with the contents of the warnings, she was put on sufficient notice that her job was in jeopardy.

Employer discharged claimant based upon two main incidents: failure to complete required counseling classes by March 6, 2020 and an incident with a staff member over a student's assigned seat on February 20, 2020. Even if the administrative law judge accepts claimant's denial of confrontation between herself and the student over the employer's hearsay evidence, there is still the issue of why she did not complete the required counseling classes by March 6, 2020.

The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985). In this case, claimant refused to complete three counseling sessions in conjunction with her final warning on February 3, 2020. The administrative law judge is persuaded the employer's request was not inappropriate. The claimant's reasons for non-compliance were in part because her union representative told her not to do the classes and because she had concerns about her personal privacy. Without evaluating whether her concerns were valid, claimant nor her representative notified employer of her privacy concerns prior to discharge, and instead disregarded her directive. If claimant felt she had been targeted based upon the assignment of counseling or had personal privacy concerns, reasonably, she or her union representative could have raised issue with the employer rather than simply refusing to comply. The claimant failed to present sufficient evidence to mitigate her non-compliance. Based upon this incident and prior discipline which put her on notice that she could be discharged, employer has met its burden of proof to establish claimant was discharged for misconduct. Benefits are denied.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

DECISION:

The unemployment insurance decision dated August 27, 2020, (reference 01) is **affirmed**. The claimant was discharged for disqualifying 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
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

December 21, 2020
Decision Dated and Mailed

jlb/scn

Note to Claimant: This decision denies benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.