

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LISA D SMITH**  
Claimant

**BERGEN PLUMBING INC**  
Employer

**APPEAL 17A-UI-04462-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/05/17**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 17, 2017, reference 01, unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on May 16, 2017. The claimant, Lisa D. Smith, participated along with witness Brittany Smith. The employer, Bergen Plumbing, Inc., participated through Matthew C. Gardner, President; and Julie Gardner, Acting CFO. Claimant's Exhibits A, B, and C and Employer's Exhibits 2 through 6 and 10 through 17 was received and admitted into the record.

**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 employee in the Accounts Receivable Department, from July 3, 2013, until March 6, 2017, when she was discharged for keeping funds that should have been remitted to the employer.

The parties agree that claimant had a furnace and air conditioning unit installed by the employer in 2016. At the time, claimant was in the process of paying off a bathroom remodel the employer had performed for her. Claimant was paying off this remodel by having the employer take \$25.00 out of her paycheck each pay period. Claimant made an arrangement with the office manager at the time, Katie Lansing, to purchase the furnace and air conditioner and add the purchase price to her existing balance, which she continued to pay off in \$25.00 installments. After having this equipment installed, claimant received a \$2,050.00 rebate from MidAmerican Energy, as she upgraded to more efficient equipment. Claimant testified that she received her rebate check in September 2016.

Both Matthew and Julie Gardner testified that claimant should have remitted this rebate to the employer. Julie Gardner testified that utility providers, such as MidAmerican Energy, often give

a rebate when a customer upgrades her equipment. The employer allows customers to sign over this rebate to help finance the purchase of the new equipment. Julie Gardner testified that as claimant did not pay for the entire unit at the time of purchase, she was obligated to sign over her rebate check to the employer. Claimant testified that no one from the employer told her that she was required to hand over her rebate check. Brittany Smith testified that she also had a unit installed by the employer when she was an employee, and she paid for the unit in installments through payroll and received her full refund check.

Julie Gardner testified that she came back to the company in November 2016, in part to help fill the gap that was left when Lansing was let go the prior July. According to Julie Gardner, claimant had been acting without a supervisor since Lansing's departure. When Ms. Gardner returned to the company, she began reviewing all outstanding accounts receivable. In connection with this task, Ms. Gardner had a meeting with claimant on January 19, 2017, to inform her that she needed to make arrangements to bring her account current by February 15. At that time, claimant owed the employer \$7,553.82. (Exhibit 14) On March 2 or 3, Ms. Gardner discovered that claimant did not remit her \$2,050.00 rebate to the employer. Claimant testified that the employer asked her to hand over the rebate on March 3. Claimant did not have the money, so she could not give it to the employer. Claimant offered to work overtime to try and pay back the employer, but Mr. Gardner wanted her to work 70 hours per week, which claimant would not do. Therefore, on March 6, claimant was discharged. Brittany Smith testified that she was also instructed to remit her rebate money to the employer in March 2017. She had the funds and gave them to the employer, and she retained her job at that time.

#### **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 the claimant provided credible testimony. While claimant knew that a customer who did not pay for her unit in full was required to remit her rebate check to the employer, claimant reasonably believed that this did not apply to her. As both a customer and an employee, claimant had far more favorable terms than the average customer. She was in the process of paying off a bathroom remodel in \$25.00 installments, an extended payment arrangement that was certainly not available to a customer. Additionally, claimant's daughter had purchased a unit the year prior and was allowed to keep her rebate check as well. The employer did not present any evidence that anyone told claimant she would need to remit her rebate check to reduce her outstanding balance with the employer. The administrative law judge finds that, given claimant's position as both a customer and an employee, she reasonably believed that she was not required to sign over her rebate check.

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 to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Here, claimant was discharged for keeping a rebate check that was issued to her. Claimant was not told she needed to give the employer the rebate check when she purchased her new unit in 2016. Regardless of whether the triggering event was claimant keeping the check or claimant being unable to immediately pay \$2,050.00 to the employer, claimant had no reasonable notice from the employer that either action would lead to her discharge. The employer has not met its burden to establish that claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

**DECISION:**

The April 17, 2017, reference 01, unemployment insurance decision is reversed. 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.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/rvs