

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KATRINA I NETTLETON
Claimant

CROSSROADS OF WESTERN IOWA
Employer

APPEAL 17A-UI-06726-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/02/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 23, 2017 (reference 03) 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 July 20, 2017. The claimant, Katrina I. Nettleton, participated. The employer, Crossroads of Western Iowa, participated through Therese Chevance, Senior HR Generalist. Claimant's Exhibit A and Employer's Exhibits 1, 2, and 3 were 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 a Links Program Specialist, from April 24, 2017, until June 8, 2017, when she was discharged. In late May, two employees within the employer's organization brought Chevance information claiming that claimant was involved in a personal relationship with her supervisor, Brent Mertz. This sort of relationship violated the employer's code of ethics. Chevance interviewed claimant on May 31 regarding this alleged relationship. Claimant denied she was having a personal relationship with Mertz, denied flirting with him, and denied having exchanged any inappropriate messages with him. When Chevance produced a text that claimant had sent Mertz, containing a picture of her on a new couch for the worksite, claimant admitted that she sent that picture but believed that was not the sort of text Chevance was investigating. At the end of this interview, Chevance notified claimant that she was required to keep their conversation confidential. Claimant then went and discussed this conversation with Mertz.

On June 5, Mertz contacted the Chief Operating Officer to report that he had "gotten himself into a situation" with one of his subordinates. He told the employer that he felt he could continue working with claimant, the subordinate in question, without issue, but he offered his resignation in the event the employer believed he could no longer perform his job. It appears that Mertz's

June 5 contact with the employer was not sent in response to anything from the employer, as he was not interviewed until June 7. The employer chose to accept Mertz's resignation. It discharged claimant on June 7, for engaging in a prohibited personal relationship with her supervisor and lying about it during an investigation.

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).

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.*

Claimant made statements during the hearing that called into question her truthfulness. Sometimes she flat-out denied having sent the text messages to Mertz, but on other occasions she said she merely "did not recall" the messages. She denied having any relationship with Mertz, but she also testified that her coworker "egged on" her relationship with him. In contrast, Chevance presented consistent and reasonable testimony. 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 version of events more credible than claimant's version of events.

The employer reasonably expected claimant to follow its code of ethics and to provide truthful information in a workplace investigation. Claimant violated both of these expectations. Her dishonesty during the investigation was in deliberate disregard of her employer's interest in maintaining a work environment free of harassment, impropriety, and the potential for the host of issues that can result when a manager and a subordinate are involved in an intimate relationship. The employer has established that claimant engaged in disqualifying, job-related misconduct. Benefits are withheld.

DECISION:

The June 23, 2017 (reference 03) 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn