

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

DANIELLE M MAJORS
Claimant

APPEAL NO: 18A-UI-11499-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RAINE RECRUITING LLC
Employer

OC: 10/21/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 21, 2018, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 12, 2018. The hearing was held jointly with Appeal 18A-UI-11500-JC-T. The claimant participated personally. The employer participated through Bill Raine, president/owner. Claimant Exhibit A was admitted. The administrative law judge took official notice of the administrative records including the fact-finding documents. 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 was employed full-time as a bookkeeper/office manager and was separated from employment on October 25, 2018, when she was discharged for manipulating time-off records.

The employer allowed the claimant 17 personal/vacation days each year. In order to request time off, the claimant could make a request verbally or in writing to Mr. Raine, who would approve the request. She would then document the date on an excel spreadsheet/calendar. The claimant was responsible for maintaining the record not only for herself but other employees too, in her capacity as office manager.

From time to time, Mr. Raine would review or retain prior months' calendars.

The claimant did not tell Mr. Raine that she wanted to rescind or reduce her PTO used because she voluntarily worked instead. She did not inform Mr. Raine that she had performed work on days she reported being on vacation. She did not ask or inform Mr. Raine that she would be deleting the days from the PTO calendar, which in return, would add days to her remaining PTO balance. The claimant also waited for months before deleting the dates, rather than deleting them upon arrival back to the office.

In July 2018, Mr. Raine warned the claimant she had only five remaining vacation days off. When she continued taking time off but Mr. Raine did not see her vacation balance decrease, he conducted an audit in October 2018 which revealed that the claimant had removed five vacation days from the calendar: March 7, 9, 28, May 21, 24, 25. The dates were removed by the claimant between May and August, 2018 and without notification to Mr. Raine.

The claimant justified the dates being removed because she had performed work those days, voluntarily, and therefore, she was not on vacation as scheduled. The claimant did not explain why had not informed Mr. Raine of working instead of vacation, or for permission to remove the dates from her vacation used. She also had no explanation for why she delayed removing the vacation from the master calendar until months later, instead of upon returning to the office.

While the claimant had no prior warnings for similar conduct, Mr. Raine determined the claimant's conduct was not truthful and given her access to all company records, credit cards and other information, he was not comfortable with retaining the claimant upon learning she had secretly modified reports to increase her vacation time available. She was subsequently discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to 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 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 this case, the claimant was responsible for tracking vacation for herself and employees in a master calendar/spreadsheet. The claimant, on five occasions, removed days she had already taken as vacation from the calendar, in efforts to credit herself, and increase her vacation balance.

If the claimant had in fact performed work substantially during her day off, she did not inform Mr. Raine of it or request the vacation day be credited back to her balance. Rather she waited for several months to remove the day, and never requested permission to remove the days. It cannot be ignored that several of the days were removed after Mr. Raine warned the claimant she was running low on vacation time. By removing used vacation days from months before, the claimant was able to add to her vacation balance. The claimant failed to offer persuasive evidence to support her justification for removing the days used without notification or permission from Mr. Raine. The administrative law judge is persuaded the claimant's modifications to the calendar were done without notification or permission to Mr. Raine to conceal the fact she wanted more vacation time.

Honesty is a reasonable, commonly accepted duty owed to the employer. The administrative law judge is persuaded the claimant knew or should have known her conduct was contrary to the best interests of the employer. Therefore, based on the evidence presented, the claimant was discharged for misconduct, even without prior warning. Benefits are denied.

DECISION:

The November 21, 2018, (reference 02) decision is affirmed. The 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.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn