

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MALOVE CHAYEE

Claimant

**SEQUEL YOUTH SERVICES OF
WOODWARD**

Employer

APPEAL 16A-UI-11940-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/09/16

Claimant: Respondent (1)

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

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the October 26, 2016, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 21, 2016. The claimant participated personally. The employer participated through Marcia Dodds, human resources director. Quentin Moreno also testified for the employer. Employer exhibits one through nine were admitted into evidence. 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.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can any charges to the employer's account be waived?

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 supervised apartment living coordinator and was separated from employment on October 7, 2016 when she was discharged for insubordination. The claimant last performed work on September 30, 2016 when the claimant was placed on suspension pending investigation.

The claimant was discharged for a single incident of insubordination to her manager, Shaniece Coleman that occurred on September 30, 2016. During the incident, both the claimant and Ms. Coleman reportedly were yelling, in the presence of a client in the house for which they supervised youth females. The verbal confrontation between Ms. Coleman and the claimant resulted from a client that the claimant refused to transport because the client had previously

been disrespectful to her by cussing at her when she picked her up for transportation. Because the claimant had conflict with the client in question, and per the employer's policy, consequences were supposed to be applied when clients act out. The employer also expected a house meeting to be conducted when client behavior needed to be addressed and the claimant had made a request for a meeting, but no such meeting occurred prior to the final incident. As a result, when the client requested a ride from the claimant, the claimant refused, thereby triggering the conflict between Ms. Coleman and the claimant. During the conversation, Ms. Coleman accused the claimant of taking things personally and insisted the claimant provide the ride to the client. The claimant refused until she was able to have a meeting to address the prior incident/behavior with the client. Reportedly, the client was in the kitchen and within earshot during the incident. Neither Ms. Coleman nor the claimant appeared to engage in any threatening behavior or use any profanity. Ms. Coleman was not discharged for the incident. Following the confrontation, Ms. Coleman reported the claimant's behavior, which triggered an investigation by the employer. Mr. Moreno indicated he took statements and conducted the investigation before deciding to discharge the claimant based on the severity of the incident.

Ms. Coleman did not attend the hearing and the employer did not present to the Appeals Bureau a written statement of Ms. Coleman in lieu of participation. No request for rescheduling was made by the employer to accommodate any scheduling conflict of Ms. Coleman.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$1988.00, since filing a claim with an effective date of October 9, 2016. The administrative record also establishes that the employer did not participate in the fact-finding interview or make a witness with direct knowledge available for rebuttal because its vendor, Thomas and Company, did not notify the employer of the scheduled fact-finding interview.

REASONINGS AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason.

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).

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The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

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 a current act of work-connected misconduct as defined by the unemployment insurance law.

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). In this case, the claimant was discharge for

acting disrespectful and insubordinate to her immediate supervisor, Shaniece Coleman, when refusing to transport a client. 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). The reason the claimant refused was because she wanted protocol followed which required a sit down meeting after an incident occurred with the client recently. Without resolution to the issue, the claimant did not want to continue to transport the client and the claimant had requested a meeting previously with Ms. Coleman and it did not occur. Therefore, the administrative law judge concludes the claimant's refusal was reasonable under the circumstances. With regard to the claimant's actual exchange with Ms. Coleman in terms of words used, voices raised and other details; the employer did not present Ms. Coleman or any first-hand testimony or written statements of anyone who witnessed the exchange. The claimant's credible evidence presented is that her response and Ms. Coleman were equal in the confrontation about a meeting before transporting the client. Mindful of the ruling in *Crosser, id.*, and noting that the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer. The claimant was reasonable in her denial of transporting the client by requesting a meeting with Ms. Coleman, per employer protocol. It cannot be ignored that the claimant had previously requested such meeting but was denied. Based on the evidence presented, the administrative law judge concludes the employer may have been justified in discharging the claimant, but work-connected misconduct as defined by the Iowa unemployment insurance law has not been established in this case.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law.

Because the claimant is eligible for benefits, the issues of overpayment and relief of charges for the employer are moot.

DECISION:

The October 26, 2016, (reference 01) decision is affirmed. The claimant was discharged for no disqualifying reason. The claimant is allowed benefits provided she is otherwise eligible. The claimant has not been overpaid benefits. The employer's account is not relieved of charges.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs