

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AARON M HETTINGER

Claimant

APPEAL 17A-UI-12070-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

STRAWBERRY POINT LUTHERAN HOME

Employer

OC: 11/05/17

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Aaron M. Hettinger (claimant) filed an appeal from the November 16, 2017, reference 01, unemployment insurance decision that denied benefits based upon the determination Strawberry Point Lutheran Home (employer) discharged him for conduct not in its best interest. The parties were properly notified about the hearing. A telephone hearing began on December 14, 2017 and concluded on December 18, 2017. The claimant participated. The employer participated through Executive Director Cherillyn Leachman and Director of Operations Cathy Mills. The Claimant's Exhibits A, B, and D were admitted without objection. His Exhibit C was admitted over the employer's objection based on relevance. The employer's Exhibits 3 through 16, 18 and 19 were admitted without objection. The Employer's Exhibits 1, 2, and 17 were admitted over the claimant's objection to foundation. The claimant and employer's statements, written for purposes of the hearing, were excluded as sworn testimony of the witnesses was taken during the hearing. The employer's page 31 from the proposed exhibits was excluded as it was duplicative in nature.

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 Maintenance Assistant beginning on August 8, 2014, and was separated from employment on October 31, 2017, when he was discharged. The employer has a Code of Conduct that states employees must treat each other and the residents with respect. The claimant's job duties included transporting residents to events outside the facility.

On Friday, October 20, 2017, the claimant drove his friend to the employer's facility to pick up her paycheck stub. Maintenance Supervisor Rick Althoff walked out to the claimant's vehicle and told him that he would have a transport when he worked on October 22. The claimant asked for further details, but Althoff did not provide them during their conversation. Althoff added detailed instructions to the maintenance staff communication binder that afternoon. The claimant worked the following day.

On Sunday, October 22, 2017, at 2:35 p.m., the claimant contacted Althoff via telephone to tell him that he was unhappy about doing the transport and that he wanted to be taken off future transports. At approximately 3:00 p.m., the time he was scheduled to transport the resident, the claimant arrived at the Nurses' Station agitated. He stated to staff members that he did not have enough notice about the transport and asked the receptionist if there was anything she could do. The claimant then stated he needed to pick up his daughter after work and he was not allowed to work overtime. The daughter of the resident waiting for the transport was in the bathroom and overheard the entire exchange. The transport was delayed further when the resident had to change wheelchairs and the keys for the van needed to be located. The claimant continued to appear agitated. The resident's daughter declined the transport at that time.

At the end of the claimant's shift, approximately 4:00 p.m., the Charge Nurse approached the claimant about the way he handled the situation regarding the transport. The claimant said she was not his boss. She explained that as the Charge Nurse, she was in charge at that time. He reiterated he did not have to listen to her and left. After the claimant left work, the resident's family requested the transport to the event and another employee was asked to come to work to facilitate the transport.

The claimant had previous warnings related to his attitude and conduct at work. He received a written warning in June 2015 for slamming tools and doors, not utilizing the chain of command, and ineffective communication. On October 28, 2015, the claimant entered into a plan of action to continue his employment which included among other things reviewing de-escalation techniques. In August 2017, the claimant had a meeting with Executive Director Cherilyn Leachman regarding pranks that were occurring between him and another employee. They also discussed the claimant's reactions to these events. The claimant was told any further issues could lead to the end of his employment.

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. Benefits are denied.

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).

The employer has the burden of proof in establishing disqualifying job misconduct. *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). 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). 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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

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.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events. The testimony of the claimant and employer's witnesses at the hearing and the written statements of the witnesses to the incident were used when making the credibility determinations about the final incident. The written notes from the investigation taken by Director of Operations Cathy Mills were not given any weight in making credibility determinations.

The employer has presented substantial and credible evidence that the claimant continued to engage in inappropriate behavior after having been warned. The claimant was given reasonable instructions to transport a resident which he refused to follow. While the claimant did not explicitly refuse to transport the resident, he indicated to management, co-workers, and within hearing distance of the resident's family that he did not want to do the transport as he had other things to do. The transport with the claimant was cancelled; however, the transport occurred once another employee could be brought in. The claimant then refused to listen to a member of management when discussing the issue and his behavior. The claimant's actions and insubordination on that day along with prior warnings related to his conduct rises to the level of disqualifying job-related misconduct. Benefits are denied.

DECISION:

The November 16, 2017, reference 01, unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld

until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn