

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL T HARGROVE
Claimant

WEST LIBERTY FOODS LLC
Employer

APPEAL 19A-UI-01875-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/10/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 1, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for conduct not in the best interest of the employer. The parties were properly notified of the hearing. A telephonic hearing was held on March 18, 2019. The claimant, Michael T. Hargrove, participated. The employer, West Liberty Foods, L.L.C., participated through Nikki Bruno, Human Resource Manager; and Brian Ralston, Operations Manager.

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 live hang employee, from January 22, 2018, until May 24, 2018, when he was discharged. Several days prior to claimant's discharge, the employer held a meeting after an employee was injured at work. Ralston was the manager in charge at the meeting. After Ralston got done speaking, he asked if anyone had any questions. Claimant got up and started talking about how the employer did not care about employees. Claimant was using aggressive mannerisms and continued raising his voice louder and louder. He was using an aggressive tone, and he was accusing the employer of abusing the employees. Ralston asked claimant to sit down several times, and claimant refused and continued talking. Claimant was ultimately discharged for this incident.

The employer maintains an Employee Handbook. Within the Employee Handbook, the employer has a policy that prohibits disorderly conduct, including threats, intimidation, and distraction by unnecessary shouting or demonstration. Claimant had previously been warned for violating this policy. On or about May 8, 2018, claimant was offsite at a medical facility on work time for a work-related injury. Claimant began yelling and screaming in the waiting area of the doctor's office, so much that patients in the waiting area and employees nearby were all distracted and staring at him. The employer attempted to discuss this issue with claimant on

May 9, 2019, while claimant was in the First Aid Office with Sue and Rhonda Gonzales. During this conversation, claimant became loud and defensive.

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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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.*

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 Ralston presented credible testimony regarding the incident that led to claimant's discharge. The administrative law judge believes that Ralson asked claimant to sit down and stop talking multiple times and claimant refused.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. In this case, claimant was discharged for making a scene during a meeting. Claimant behaved loudly and aggressively, and he refused to sit down and stop talking when the employer asked him to. Claimant had previously been warned about yelling and acting aggressively and a reasonable employee would know his job was in jeopardy if he engaged in that conduct again. The employer has established that claimant was discharged from employment due to disqualifying, job-related misconduct. Benefits are withheld.

DECISION:

The March 1, 2019, (reference 01) unemployment insurance decision is affirmed. 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn