

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JENNIFER L WILLIAMS**  
Claimant

**APPEAL 15A-UI-10916-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DEN HARTOG INDUSTRIES INC**  
Employer

**OC: 08/30/15  
Claimant: Appellant (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.5(1) – Voluntary Quitting

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 21, 2015, (reference 01) unemployment insurance decision that denied benefits based upon the determination she was discharged for engaging in conduct that was not in the best interest of the employer. The parties were properly notified about the hearing. A telephone hearing began on October 13, 2015 and was concluded on October 14, 2015. Claimant Jennifer Williams and Witness Larry Williams participated on the claimant's behalf. Employer Den Hartog Industries, Inc. participated through Human Resources Generalist Christine Koerselman and Night Shift Manager Jason Bork. Employer's Exhibit 1 was received.

**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 an Oven/Finishing Operator beginning September 13, 2011, and was separated from employment on September 1, 2015, when she was discharged. On the evening of August 31, 2015, the claimant was taking a cigarette break in the smoke shack. The claimant's husband and co-worker, Larry Williams,<sup>1</sup> arrived at the smoke shack with co-worker Julie Vander Plas. Upon arrival, the claimant made a comment about the two of them arriving on break together. Williams then went on to explain to Vander Plas that he and the claimant had been arguing for weeks about him and VanderPlas having a romantic relationship. Williams also made some disparaging comments about the claimant. Vander Plas told the claimant she did not have anything to worry about and apologized for causing issues. The claimant told Vander Plas that she has people watching Williams and Vander Plas. Another co-worker, Jerry Bowlsby, came out to the smoke shack and the conversation ended.

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<sup>1</sup> After the claimant was discharged, Williams did not return to work and he also discontinued his employment with the employer.

VanderPlas later approached Bowsby and thanked him for coming outside when he did as she had been caught in the middle of a heated argument. He encouraged her to report the situation to Injection Night Manager Dave Reekers, which she did. Reekers contacted Night Shift Manager Jason Bork and an investigation was conducted. They interviewed and collected signed statements from all four parties. The claimant and Williams denied that the claimant did any of the talking that evening. Reekers and Bork determined the claimant had engaged in a confrontation which created a hostile environment and made another employee feel uncomfortable.

The claimant had previously been warned for similar conduct. On October 22, 2013, the claimant was given a final notice and suspended after Bork witnessed her lose her temper with a co-worker, making rude comments and snatching a bag away from the employee. On October 23, 2014, the claimant was issued another notice for unprofessional conduct when she lost her temper and used loud and vulgar language. She was put on notice there would be zero tolerance going forward and any further incidents would result in disciplinary action up to and including termination.

After the incident on August 31, 2015 and based on her previous disciplinary history, the employer terminated the claimant's 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 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).

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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995).

The claimant argued she did not say anything to Vander Plas or Williams in the smoke shack on the evening of August 31, 2015 other than "right on time" when they arrived. Williams supported the claimant's version of events. The employer provided signed statements from Bowsby and Vander Plas regarding the events of the evening which contradict the claimant and Williams.

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 does not find the claimant and Williams' testimony about the events in the smoke shack to be credible. In her initial statement to the employer, the claimant did not acknowledge saying anything to Vander Plas; however, in her testimony during the hearing that changed to making a comment when they first approached. The claimant and Williams both have an interest in the outcome of the hearing and the situation in the smoke shack; whereas, Vander Plas and Bowsby do not have any ascertainable interest in the outcome of either situation. Additionally, given the nature of the conversation, it is not believable that Williams, completely unprompted, just started telling Vander Plas about their marital issues and that the claimant allowed him to disparage her without saying anything. The most logical explanation to the beginning of the conversation in the smoke shack is that the claimant made an observation about the two employees arriving together.

The employer has met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. The claimant implied another employee was engaging in immoral conduct and threatened that employee by saying she had people watching her, both of which constitute unprofessional conduct. She had previously been warned about similar conduct and was aware that further incidents of unprofessional conduct could lead to termination. Accordingly, benefits are denied.

**DECISION:**

The September 21, 2015, (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 she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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