

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JANINE BAUER
Claimant

CITY OF URBANDALE
Employer

APPEAL 17A-UI-07091-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/18/17
Claimant: Appellant (1)**

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 July 7, 2017, (reference 01) unemployment insurance decision that denied benefits based upon her discharge for insubordination. The parties were properly notified of the hearing. A telephone hearing was held on July 28, 2017. The claimant participated and testified. The employer participated through Human Resource Director Karla Lower and Library Director Julie Wells. Also present on behalf of the employer, but not testifying, was assistant to the city manager John Konoir.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a library manager from March 10, 2008, until this employment ended on June 9, 2017, when she was discharged.

On May 23, 2017, claimant submitted her notice of resignation, effective July 7, 2017. Claimant testified she was resigning because the work load had become too much for her and was giving her anxiety to the point she could no longer take it. Though claimant was seeing a medical professional to treat her anxiety, her decision to quit was not based on any medical directive to do so from her treating professional.

On Wednesday, June 7, 2017, claimant was notified by her supervisor, Wells, that it was the employer's policy to freeze any remaining vacation for the last two weeks of employment, as the employer wants to ensure employees are working until the end of their periods. Claimant was upset by this, as she had a vacation planned at the end of the month, and a discussion ensued, which became loud and was overheard by other employees. That same day claimant spoke with Lower about her vacation and previously approved intermittent FMLA. Claimant asked Lower when her FMLA approval expired and was told it was towards the end of June. Claimant

then asked Lower about taking Thursday off work. Lower testified claimant indicated she wanted to take the day off to be with her mother at the hospital as emotional support while her step-father was treated for a medical condition. Lower advised claimant her FMLA time was only approved for her own medical condition and if she wanted to take Thursday off, she would need to get approval from Wells. Lower further advised claimant that going forward she would need to get approval from Wells for any time she wanted to take off through July 7.

On June 8, 2017, claimant left a message for Wells stating she would not be in to work that day. According to Wells claimant indicated the reason she would not be in was due to her step-father's medical condition and wanting to be at the hospital to support her mother. Wells further testified claimant did not ask permission to take the day off, but rather informed her she was taking the day off via message. It was later brought to Wells' attention by other employees that claimant had posted some pictures on Facebook on June 8 indicating she was spending the day at home washing cars and enjoying time with her husband and children. Once this was brought to the employer's attention, claimant was discharged for being dishonest.

Claimant testified she was spending part of the day on June 8 at home enjoying time with her family, but that she also spent part of the day at the hospital with her mother. Claimant denied she told Wells or Lower that she wanted to take June 8 off to be at the hospital with her mother and testified she had taken the day off as part of her approved intermittent FMLA due to her anxiety. Claimant testified she could not recall speaking to Lower about taking Thursday off at all and did not believe she needed to get permission from Wells to take the day off because she was taking it as FMLA time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment without good cause attributable to the employer, but was discharged from employment due to job-related misconduct prior to the intended resignation date.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.25 provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (27) The claimant left rather than perform the assigned work as instructed.

Iowa Code section 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.

871 IAC 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 Department of Job Service*, 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). 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). 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The decision in this case rests, at least in part, on the credibility of the witnesses. 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.*

Claimant contends she was taking June 8 off under her previously approved FMLA and denies she said she was taking it off to be with her mother. Both of the employer's witnesses testified claimant indicated she was going to take the day off to be with her mother as support. After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events. Furthermore, claimant's contention that she needed to take the day off due to her anxiety is unconvincing given that she had first made inquiries about taking the day off a full day prior and based on the activities she was admittedly engaged in that same day. Finally, claimant was given explicit instructions that she needed to get permission from Wells for any time she wanted off. Instead of following this instruction claimant notified Wells she would not be in via message on June 8.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that claimant was dishonest with the employer about why she was taking June 8 off work and that she failed to get prior approval to take the day as she was specifically instructed to do. This is disqualifying misconduct, even without prior warning. Claimant's decision to quit because she was overwhelmed by the work was not a good cause reason attributable to the employer and would also have been disqualifying had she not been discharged prior to her resignation date.

DECISION:

The July 7, 2017, (reference 01) decision is affirmed. The claimant voluntarily left employment without good cause attributable to the employer, but was discharged prior to the resignation effective date. 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.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs