

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MYRNA A LARSON
Claimant

MOSAIC
Employer

APPEAL 18A-UI-02949-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/21/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Myrna A. Larson (claimant) filed an appeal from the February 21, 2018, reference 01, unemployment insurance decision that denied benefits based upon the determination Mosaic (employer) discharged her for engaging in conduct that was not in its best interest. The parties were properly notified about the hearing. A telephone hearing began on March 30, 2018 and concluded on April 12, 2018. The claimant participated. The employer was represented by Marcy Schneider of Talx and participated through Human Resources Business Partner Tenisha Benson and Human Resource Manager Teresa Tekolste. The Employer's Exhibit 1 was admitted without objection.

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 Direct Support Associate beginning on February 16, 2015, and was separated from employment on January 25, 2018, when she was discharged. The employer has a policy outlining mistreatment and abuse of residents. The policy states if the employer determines an incident of mistreatment or abuse has occurred, the employee who engages in the conduct will be discharged.

On January 16, 2018, the claimant was working her normal shift. She was required to pass medications and provide direct care to residents. The claimant was having a "rough night." (Claimant's testimony, Exhibit 1 page 4) She did not tell anyone in management that she was feeling stressed that night.

The following day, the three employees who worked with the claimant the evening prior, reported various incidents to management. They reported the claimant forced medication on an uncoated spoon into a resident's mouth and pulled another resident's head back to force him to take his medications. One of them reported that the claimant pulled on a resident's gait belt forcing her to fall and then told the resident to stop being a baby when she started crying.

The employer contacted the claimant to ask her about the reports it had received. The claimant explained she was having a difficult night and stated she would never intentionally hurt a resident, but might hurt them unintentionally. When asked about the specific incidents, the claimant stated she had no short-term memory and did not remember engaging in the conduct described.

The employer suspended the claimant and conducted an investigation. The investigator determined the claimant had engaged in the conduct of which she was accused. The employer discharged the claimant for violation of its policies related to mistreatment and abuse of persons served.

The claimant had received prior warnings related to the way she spoke to or dealt with residents. On October 10, 2017, she received warning for using harsh words and yelling back at people who are upset and yelling. She received a final written warning on November 18, 2017 for not properly ensuring the health, safety and comfort needs of the people served. She was told at that time if she had any questions or concerns to contact the on-call supervisor or program manager. She was also told that any further incidents would result in corrective action up to and including termination of 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 employer has met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. It presented substantial and credible evidence that the claimant mistreated residents after having been warned. Even without prior warning, the claimant’s conduct on January 16, 2018 would be disqualifying misconduct as the employer has an interest in providing a safe and healthy environment for the people served. The claimant’s conduct towards the residents on that evening, regardless of her reasons, was a deliberate disregard of the employer’s best interest. Accordingly, benefits are denied.

DECISION:

The February 21, 2018, 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn