

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHELLE A KEYS

Claimant

APPEAL 16A-UI-07543-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EDEN NATURAL LLC

Employer

OC: 06/12/16

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 30, 2016, (reference 01) unemployment insurance decision that denied benefits based upon her discharge for theft. The parties were properly notified of the hearing. A telephone hearing was held on July 27, 2016. The claimant Michelle Keys participated and testified. The employer Eden Natural LLC participated through Operations Manager Mark Berry.

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 as a sales representative from April 2, 2015, until this employment ended on June 15, 2016, when she was discharged.

On May 20, 2016, claimant was asked by Berry to make a cash deposit into the employer's account on her way to see a customer. Several weeks later, the employer noticed the deposit was not in the account. Berry asked claimant what happened. Accordingly to Berry, claimant reported she went to the bank before going to see the customer and described in detail the deposit lane she went through and the person who helped her. Berry testified claimant told him she had left a receipt for the deposit on his desk, but he could not locate the receipt. After speaking with claimant, Berry contacted the bank again. The bank investigated and again found no deposit had been made. The bank also reviewed security footage and did not see claimant's car in the lane she claimed to have gone through. The employer again met with claimant to ask her about the deposit. Berry testified once she was presented with the information the employer received from the bank, claimant changed her story to say she had forgotten to go to the bank and did not know what happened to the money, but suspected it might have been stolen out of her car while she was in with the customer. Based on the inconsistencies of claimant's statements, the employer concluded she must have taken the deposit and terminated her employment effective immediately.

Claimant denied she engaged in theft. Claimant explained, on the date in question, Berry asked her to make the deposit as she was walking out the door to go see a customer. Claimant denied she ever told the employer she went to the bank prior to seeing the customer. Claimant testified she went directly to the customer, forgetting she was supposed to make a deposit. As claimant was getting into her car the customer came out and asked her to come back in to address an issue. Claimant believes the money may have been stolen out of her car at this time. The money was located in a blue envelope tucked into some business papers the claimant had. A few days later claimant noticed the blue envelope in with her papers and returned it to the employer. Claimant, forgetting about the deposit, did not check the envelope for the cash at this time. Claimant explained when Berry first approached her about the May 20 deposit, she thought he was talking about another deposit he had asked her to make sometime shortly before that date. Claimant could not remember when she made the previous deposit and Berry had no record or recollection of claimant making a deposit prior to May 20. Claimant did not remember the May 20 deposit until the second time the employer spoke with her, at which time she explained she never made the deposit and it might have been stolen from her car.

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 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). 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).

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.* 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 the employer's recollection of events more credible than that of the claimant.

Taking money meant to be deposited in the employer's account is theft from the employer. Theft from an employer is generally disqualifying misconduct. *Ringland Johnson, Inc. v. Hunecke*, 585 N.W.2d 269, 272 (Iowa 1998). In *Ringland*, the Court found a single attempted theft to be misconduct as a matter of law. In this case, the claimant deliberately disregarded the employer's interest. The claimant engaged in disqualifying misconduct even without previous warning. Benefits are denied.

DECISION:

The June 30, 2016, (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.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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