

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SARAH W JANSSEN

Claimant

QHC MITCHELLVILLE LLC

Employer

APPEAL 17A-UI-06014-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/21/17

Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 9, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on June 29, 2017. The claimant participated personally and was represented by Jon Geyer, hearing representative/paralegal. The employer participated through Kim Mason, operations/nurse specialist. Cyndi Gentz and Charlie Greenlee also attended for the employer.

Claimant Exhibits A, B, and C and Employer Exhibits 1 through 9 were received into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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 certified medical aide (CMA) and was separated from employment on May 23, 2017, when she was discharged for insubordination, for refusal to work weekend shifts.

The claimant was hired in 2014 as a restorative aide, and discussed her work schedule with the employer by way of Tammy Bredlow. Even though the employer has a written policy, which the claimant acknowledged at hire, that allows the employer to change her schedule for business needs, the employer agreed by way of Ms. Bredlow, not to make the claimant work weekends. When the claimant moved into the CMA position effective July 2016, the claimant again reminded the employer by way of Sue Collier that she could not work weekends and was not scheduled to work any.

On February 28, 2017, the claimant received written notice that she would now be expected to work every other weekend (Saturday and Sunday), beginning March 25 and 26, 2017 (See Employer Exhibit 5). The claimant met with Kim Mason on March 20, 2017 and explained why she could not work weekends (See Employer Exhibit 6, and Employer Exhibit 5, page 2). The undisputed evidence is at no time during the claimant's employment history had she ever worked a weekend shift.

The reason the claimant will not work weekends is due to childcare issues. The claimant has 8 children, 7 which live at home with her, and 5 which require daycare. One of the children requiring daycare also has special needs and there is only one daycare within 45 minutes who will provide care to the child with special needs, which is not open on weekends. Her husband is active duty, and has been deployed off and on during her employment. Her family does not reside in Iowa.

The employer applied its progressive discipline policy and issued a verbal warning for her refusal to work March 25 and 26 (See Employer Exhibit 4), a written warning for not working April 8 and 9, 2017 (See Employer Exhibit 8), and a suspension on May 6 and 7, 2017 (See Employer Exhibit 9). The claimant had attempted to contact multiple people to cover shifts to ease the burden for the employer but was unsuccessful. She was subsequently discharged on May 23, 2017 after she did not work her weekend shifts on May 20 and 21 (See Employer Exhibit 2).

REASONINGS AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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).

"This is the meaning which has been given the term in other jurisdictions under similar statutes, and we believe it accurately reflects the intent of the legislature." *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d, 445, 448 (Iowa 1979).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988).

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.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

In this case, the claimant was discharged after refusing to work weekend shifts. When the claimant was hired, she made the employer aware she would not work weekend shifts. Throughout the claimant's entire employment history from 2014 until February 2017, the claimant was never asked to work weekends, in light of a policy, which the claimant was aware of, that allows the employer to give written notice and change an employee's shift for business needs. The claimant was first notified she would have to work every other weekend (consisting of both Saturday and Sunday) on February 28, 2017 (Employer Exhibit 5) and made the employer aware that she had not and could not work weekend shifts (Employer Exhibit 5, page 2).

The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985). In this case, the claimant worked her entire employment with an agreed understanding that she would not have to work weekends. This was supported for over two years of employment by the fact she was not requested to work weekends, regardless of the employer policy, which states schedules can be changed at the employer's request. When the claimant was made aware that she would have to work weekends, she reminded the employer that she could not work weekends. The reason the claimant cannot work weekends is reasonable: she has 5 small children requiring daycare if she is not working, including one with special needs, and the daycare that will provide care to her special needs child is closed on weekends. The claimant's husband is active duty in the military and her family is not in Iowa to help provide support. Based on the claimant's work history, this change was a substantial change to the terms she had worked under during her entire employment and therefore the employer's request was not reasonable in light of all circumstances. The claimant has provided a reasonable explanation to justify her non-compliance with the employer's request. Consequently, the claimant's refusal to work weekends (in light of the employer's written policy and applying progressive discipline) is not misconduct. While the employer may have had good business reasons to discharge the claimant, misconduct, as defined by Iowa law, has not been established. Benefits are allowed.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding.

DECISION:

The June 9, 2017, (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The benefits claimed and withheld shall be paid, provided she is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn