

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JENNIFER L STAFFORD
Claimant

ABCM CORPORATION
Employer

APPEAL 15A-UI-11108-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/06/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 29, 2015, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A hearing scheduled for October 19, 2015 was continued to allow the employer to respond to a claimant issued subpoena. A second telephone hearing was held on October 28, 2015. The claimant participated personally. The employer participated through Jordan Poole, the administrator-in-training. Deb Shafer also testified for the employer. No documents were offered or admitted into evidence.

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 part time as a certified nursing assistant and was separated from employment on September 4, 2015, when she was discharged for theft.

The employer is a residential nursing facility, and on August 24, 2015,

On August 6, 2015, Resident #1 went to Walmart to return items, and received a merchandise credit gift card. She shopped and used part of the credit that day, and left Walmart with a balance of \$39.28 on the card. On August 24, Resident #1 reported a list of items missing, including the Walmart card, which had been stored in her purse. Employees were interviewed, including the claimant to determine who had access to Resident #1 the day of the missing items. The employer also called Walmart, who confirmed that on August 24, 2015, the claimant was viewed on surveillance footage using the gift card in question, and that the same card was the one previously issued to Resident #1. The claimant was suspended and ultimately discharged for the incident. During the suspension, the employer made three calls to the claimant but she was non-responsive.

At the hearing, the claimant admitted to using the merchandise credit gift card at the Mount Pleasant Walmart location on August 24, 2015, but that it was a result of a mistake. The claimant asserted Resident #2 was mad at her for enforcing the rules after an incident of catching Resident #2 use the ice machine with her hands, and not the ice scoop. Per the claimant, Resident #2 also has historically pilfered through purses from time to time. The claimant stated Resident #2 must have accessed Resident #1's purse, retrieved the gift card, and then gone to the soiled linens utility room where claimant stored her bag, (her purse was kept in the car) and placed the gift card in the claimant's bag, to "frame her." The claimant's explanation continued that she did not recognize the gift card as not belonging to her because her husband had a merchandise credit for a similar amount, and she assumed when she reached into her bag at Walmart, which then contained her work belongings and her purse, that he put the gift card there for her. The claimant was arrested and charged for theft, and there has been no disposition yet of the charges.

The employer has no record of Resident #2 being known for accessing purses, but does allow employees access to locked facilities upon request, if they wish to store their personal belongings, as well as encourage employees to leave anything they can in their vehicles.

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.

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.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent, or evil design. 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 misconduct within the meaning of the statute. 871 IAC 24.32(1).

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 account of events when compared to claimant's recollection of the event, as more credible. Even if the claimant's account was believable, and the claimant believed Resident #2 had a propensity for going through purses and was mad at her, it is unclear why she would leave her bag out, accessible for Resident #2 to access. The claimant left her purse in her car, so it is unclear why she would not leave personal belongings there too, or alternately request to lock up her belongings.

The claimant provided no credible evidence or testimony that Resident #2, (who by nature of the employer's business, was elderly, unable to live independently, and monitored) would have the time and ability to develop a plan of rifling through Resident #1's purse to find something to plant and frame the claimant with, and then located the claimant's personal bag, in a soiled linens utility closet, and planted the merchandise credit gift card there, without anyone noticing her. Based on the evidence presented, the claimant knew or should have known her conduct was in disregard of the employer's interests and reasonable standards of behavior that the employer has a right to expect of its employees. Work-connected misconduct as defined by the unemployment insurance law has been established in this case. Benefits are withheld.

DECISION:

The September 29, 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.

Jennifer L. Coe
Administrative Law Judge

Decision Dated and Mailed

jlc/css