

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KIMBERLY A HUTCHISON
Claimant

AG PARTNERS LLC
Employer

APPEAL 21A-UI-20003-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/11/21
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

On September 9, 2021, the claimant filed an appeal from the August 31, 2021, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 1, 2021. Claimant Kimberly Hutchinson participated and testified. Employer participated through Lucas Kline, Location Leader. Claimant's Exhibits A, B, and C were offered and admitted. Official notice was taken of the administrative record.

ISSUE:

Was the claimant discharged from employment for disqualifying job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on May 5, 2018. Claimant last worked as a full-time customer service and billing agent. Claimant was separated from employment on July 14, 2021, when she was discharged for her inability to get along with customers and co-workers. The claimant had several verbal altercations with customers over issues ranging from their Covid-19 status to admonishing them not calling ahead prior to deliveries or mistakes on their load tickets. The claimant's last performance evaluation was in December of 2019 and while her overall performance met expectations she was advised that her interaction with customers and co-workers could be more positive and courteous. (Claimant's Exhibit B).

The claimant's final negative encounter with a customer occurred on July 1, 2021. Claimant admonished a customer on the phone for not providing the delivery tickets prior to a delivery and for changing the type of bean that was being delivered. The customer became angry and hung up on the claimant. The employer became aware of this incident and on July 13, 2021, Lucas Kline, spoke with the claimant again about her demeanor in general and for the specific incident with the customer on July 1, 2021. This conversation angered the claimant and she left for the day. She returned the following day and was terminated. She was terminated for lack of tact with customers, her defensiveness, and her inability to be coached.

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) (2019) provides:

Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

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 Division of Job Service defines misconduct at 871 IAC 24.32(1)(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.

The Iowa Supreme court has accepted this definition as reflecting the intent of the legislature. *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 665, (Iowa 2000) (quoting *Reigelsberger v. Employment Appeal Board*, 500 N.W.2d 64, 66 (Iowa 1993)).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982). The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Board*, 616 NW2d 661 (Iowa 2000).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The fact-finder must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985). Good faith under this standard is not determined by the Petitioner's subjective understanding. Good faith is measured by an objective standard of reasonableness. "The key question is what a reasonable person would have believed under the circumstances." *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988) accord *O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993) (objective good faith is test in quits for good cause).

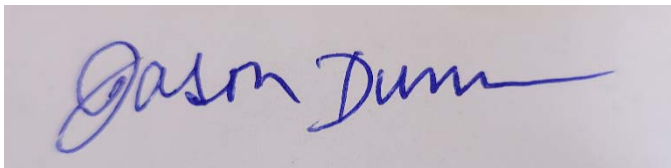
The reasonableness of the employer's demand in light of the circumstances must be evaluated, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985). The key to such cases is not the worker's subjective point of view but "what a reasonable person would have believed under the circumstances." *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988); accord *O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993)(objective good faith is test in quits for good cause). For example, in *Green v. IDJS*, 299 N.W.2d 651 (Iowa 1980) an employee refused to sign a warning to acknowledge that she understood why she was being warned. The Court found the refusal to be disqualifying as a matter of law, and did not focus on whether the warning was justified or not. *Green* at 655. The claimant's actions in refusing to do as told "show[ed] an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer." 871 IAC 24.32(1)(a).

The claimant's problems with customers and her co-workers stem from the fact that she did not believe that any of her behaviors were problematic despite repeated warnings that her demeanor and interactions with customers and co-workers were issues for the employer. The claimant's last performance evaluation noted that she needed to "continue to work on your demeanor with customers, making sure to treat them with respect and in a professional manner when interacting with them" (Claimant's Exhibit B, p.3). The claimant wrote next to that improvement goal "I believe I treat all of our customers with respect." (*Id.*). The claimant testified that on July 13, 2021, when her employer attempted to discuss the July 1, 2021, phone call involving the upset client, she became so enraged that she left for the day. The claimant stated she was angry because no one had ever told her she was not good at something or that she was 'not nice'. The claimant's inability to understand and accept that her demeanor and interaction with customers needed to improve and in addition to her display of anger on July 13, 2021, is not reasonable and disqualifying job 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.

DECISION:

The August 31, 2021, (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.



Jason Dunn
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December 7, 2021
Decision Dated and Mailed

jd/scn