

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LORI A KELEHER
Claimant

MID-STEP SERVICES INC
Employer

APPEAL 15A-UI-09345-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/19/15
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 10, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 4, 2015. Claimant participated. Employer participated through Jan Hackett, Human Resources Director and Liz Jones, Work Center Assistant Director.

ISSUE:

Was the claimant discharged due to job-connected 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 work center coordinator beginning on December 26, 1997 through July 17, 2015 when she was discharged. The claimant coordinated a program that helped mentally and physically disabled individuals live and work in their respective communities. As such she was required to model good behavior that the consumers could imitate when they were in their respective workplaces.

The claimant had been given repeated warnings about her behavior over the years by each one of her supervisors. She had multiple complaints about her behavior regarding her treatment of coworkers and consumers. The claimant was transferred multiple times to deal with her performance issues. Initially after each transfer she would improve then again would fall back into the same habits and issues and again be disciplined.

The employer has a written policy manual, a copy of which had been given to the claimant. The employer followed their own policy in disciplining the claimant. The claimant was not treated any differently than any other employee.

On April 29 the claimant was suspended for an event on that occurred on April 22. On April 22 the claimant was meeting with Ms. Jones and being given a disciplinary corrective action. She refused to sign the document and tore it up in front of Ms. Jones, then walked out of the building. The claimant was suspended on April 29 for tearing up the document, and walking off

her shift without permission. The next step in the employer's policy is discharge. The claimant filed a grievance about the April 22 incident but later dropped it. The claimant knew or should have known that tearing up papers given to her by her supervisor was an unacceptable way of showing her disagreement or frustration with the employer.

The staff including the claimant, had an area where they would teach consumers how to grocery shop. The claimant had attended training instructors were she was told to vary the grocery lists given to the consumers so that they could practice actually shopping, not just picking up the same items over and over again. Ms. Jones noted on July 17 that the claimant as not using a new grocery list with a consumer and corrected her. The claimant became angry, rolled her eyes at Ms. Jones, tore up the papers given to her front of both Ms. Jones and the consumer and then walked away. The claimant modeled poor behavior in front of the consumer and was insubordinate to Ms. Jones. When Ms. Jones gave her the correct lists to use, the claimant did not follow the instructions, but tore them up. The claimant admitted that tearing up the grocery lists was unacceptable behavior.

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.

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).

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. EAB*, 531 N.W.2d 645 (Iowa App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa 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 Ct. 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. *State v. Holtz*, 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. *State v. Holtz*, Id.

The claimant was not a credible witness on her own behalf. She knew what was expected of her and did not do it. Ms. Jones was within her rights to have her use the new grocery lists. Her allegations that Ms. Jones was yelling at her and was out to get her are not credible in that the claimant never went to anyone in human resources to complain and every single one of the claimant's prior supervisor had written her up. The claimant was given multiple opportunities to improve but refused to change her behavior, even after being given a suspension. The claimant's actions on July 17 in light of her prior warnings for similar behavior are sufficient misconduct to disqualify her from receipt of unemployment insurance benefits. Benefits are denied.

DECISION:

The August 10, 2015, (reference 01) 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css