

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMANDA M CARPENTER
Claimant

APPEAL 18A-UI-11510-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AJS OF DES MOINES INC
Employer

**OC: 10/28/18
Claimant: Respondent (1)**

Iowa Code § 96.5(2) – Discharge for Misconduct
Iowa Admin r. 871-24.32 – Discharge for Misconduct

STATEMENT OF THE CASE:

AJS of Des Moines, Inc., Employer, filed an appeal from the November 19, 2018 (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on December 13, 2018 at 3:00 p.m. Claimant participated. Employer participated through Scott Schwiesow, Regional Director of Operations, and Penny Peters, Office Manager. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether claimant's separation was a discharge due to disqualifying job-related misconduct.
Whether claimant was overpaid benefits.
Whether claimant should repay benefits.
Whether employer should be charged due to participation in the fact-finding interview.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a production worker from September 10, 2018 until her employment with AJS of Des Moines, Inc. ended on November 2, 2018. (Schwiesow Testimony) Claimant's direct supervisor was Mark Marvin, Area Manager. (Schwiesow Testimony) Claimant's schedule was Monday through Friday from 8:00 a.m. until 4:30 p.m. (Schwiesow Testimony)

Shortly after claimant arrived at work on November 1, 2018, employer received a telephone call from someone purporting to be claimant's child's school. (Peters Testimony) The person stated that claimant's child was ill and claimant needed to pick the child up from school. (Peters Testimony) Employer gave the message to claimant who left work to attend to her child. (Schwiesow Testimony) Employer noticed the number on the caller identification was not a school but a person with the same last name as claimant. (Peters Testimony) Employer became suspicious and called claimant's child's school. (Peters Testimony) Employer reports someone at the school stated that the child was not ill and was in class. (Peters Testimony)

Claimant picked her child up from school at approximately 9:00 a.m. (Claimant Testimony) Claimant took her child to the doctor at 11:45 a.m., which is when she was able to get an appointment. (Claimant Testimony) When claimant left the doctor's office, she learned that she missed two calls and received two voicemail messages from employer. (Claimant Testimony) Employer's first call was made at approximately 10:00 a.m.; the message employer left requested a return call. (Schwiesow Testimony) Employer's second call was made at 11:50 a.m.; employer's message informed claimant that her employment was terminated. (Schwiesow Testimony)

Claimant returned employer's calls at approximately 1:00 p.m. and explained to employer that the number on caller identification was that of claimant's cousin, who is listed as the child's emergency contact at school because she is a stay-at-home mother and claimant does not always have access to her telephone at work. (Claimant Testimony) Claimant also told employer that she had a note from the doctor. (Claimant Testimony) Employer told claimant not to return to work that day or the next day and that it would look into the matter further. (Schwiesow Testimony) Claimant took the doctor's note to employer at approximately 1:30 p.m. that same day. (Peters Testimony) Claimant then obtained a note from the child's school and took it to employer at approximately 3:00 p.m. that same day. (Peters Testimony)

Employer contacted the school, which confirmed writing the note but would not provide employer with additional information regarding the child's absence. (Schwiesow Testimony) Employer was not satisfied with the lack of detail in the school's note (i.e. it did not include the time or the reason for which the child was withdrawn from school) and the doctor's note (i.e. it stated the date, but not the time of day, that the child was seen by the doctor). (Schwiesow Testimony) Employer discharged claimant on November 2, 2018 for dishonesty regarding the events of November 1, 2018. (Schwiesow Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed if claimant is otherwise eligible.

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 disqualification shall continue 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). 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 Bd.*, 616 N.W.2d 661 (Iowa 2000).

It is the duty of the administrative law judge, as the trier of fact, 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 evidence you believe; 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.*

I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the

claimant's explanation of events to be more credible than the employer's suspicions regarding those events. Claimant credibly testified about her cousin serving as her child's emergency contact for the school and about taking her child to the doctor. Furthermore, claimant's testimony is supported by her action of providing employer with notes from her child's doctor and school. Claimant obtained the notes and delivered them to employer on her own accord; the notes were not requested by employer. Claimant took this action the same day of her absence and after having received a message from employer stating her employment was terminated. These are not the actions of an employee who is scheming a way to miss work. In contrast, when employer received the notes from claimant, it criticized their lack of detail and authorship instead of giving claimant the benefit of the doubt or requesting more detailed statements.

Employer has not met its burden of proving disqualifying, job-related misconduct. Claimant was discharged for no disqualifying reason. Benefits are allowed provided claimant is otherwise eligible. Because claimant's separation was not disqualifying, the issues of overpayment, repayment and chargeability are moot.

DECISION:

The November 19, 2018 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged for no disqualifying reason. Benefits are allowed if the claimant is otherwise eligible. The issues of overpayment, repayment and chargeability are moot.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/rvs