

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**DAWN M MCCOLLOUGH**  
Claimant

**MEDIACOM COMMUNICATIONS**  
Employer

**APPEAL 17A-UI-07847-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/25/17**  
**Claimant: Appellant (1)**

---

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the July 26, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 14, 2017. Claimant participated and was represented by Jason S. Reiper, attorney at law. Employer participated through Lisa Wiblin, Supervisor of Human Resources.

**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 supervisor beginning on March 10, 2014 through June 26, 2017, when she discharged.

The claimant went with a group of employees she supervised on Saturday, May 20. She and the rest of the employees consumed alcohol while on the outing which started at a gaming facility and ended at a bar/restaurant. During the outing, the claimant was upset with Rondi's boyfriend who was with the group. In front of at least four of Rondi's coworkers the claimant yelled across the table at Rondi, "I'm going to write you up on Monday." Later that same evening after the claimant had left the bar/restaurant she sent a text to Samantha, one of the lead workers saying, "K, seriously you write her up on Monday." Samantha believed the claimant was referring to Rondi. Samantha as a lead worker had no authority to write up any employee. Samantha was not a management employee and the claimant had no right to discuss Rondi's potential discipline with her.

On Monday May 22 Rondi went to human resources and filed a complaint against the claimant indicating she had breached employee confidentiality by yelling at her in a restaurant that she was going to write her up on Monday. That same day the claimant was interviewed and denied ever making any such comment to Rondi. Because the claimant's version of events was so different than what Rondi had described the employer determined to interview the other

employees who were present during the evening. Because the claimant was the supervisor of all of those employees, she was given a paid leave of absence in order that employees would feel free to provide information to the human resources department. The claimant sent an apology message to Rondi on Monday May 22 after learning that Rondi had complained about her.

Four of the six employees who were present for the event all provided essentially the same story, that they heard the claimant yell across the table at Rondi that she was going to write her up on Monday. Also, during her interview Samantha showed Ms. Wiblin the text message she had been sent by the claimant after the claimant left the restaurant on Saturday night where the claimant told Samantha to write up Rondi. The employees also indicated that the claimant had consumed a lot of alcohol and they thought she was drunk. When the claimant was interviewed she told Ms. Wiblin that she did not have her phone with her on Saturday night after she left the restaurant.

In January 2017 the claimant had been coached for recommending to an employee with a workers compensation claim that he see her pain management doctor for treatment. In May the claimant posted a message on one of her employee's Facebook page telling her that she was out of FMLA (family medical leave) and that her overtime hours had been cancelled. The claimant was specifically told by her supervisor that her public comment on an employee's Facebook page about FMLA usage was inappropriate as FMLA use was a confidential matter. Since the claimant herself had used FMLA she knew that it was a confidential matter. After the claimant's supervisor spoke to her, the claimant removed the comment she had made and told Ms. Wiblin she had removed it.

The claimant admits that she knew any discussion of discipline between an employee and the manager would be confidential. Discussion of disciplinary matters is inappropriate in a public place particularly when the participants are consuming alcohol. When the claimant was discharged she was told it was due to her poor performance based on her inability to keep personnel matters confidential.

#### **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 section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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:

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).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). It is not unreasonable for an employer to expect management to keep disciplinary matters confidential for the employees they supervise. The claimant knew she was obligated to keep personnel matters confidential.

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 claimant was not a credible witnesses. Four of the employees the claimant supervised heard hear yell across the table at a coworker that she was going to write her up on Monday. The claimant also is not credible when she indicated that Samantha sent her a text saying she should write up Rondi on Monday. The claimant herself sent that text to Samantha after she left the restaurant. The claimant had been told previously that she had to keep personnel matters confidential when she posted on a public Facebook page about a subordinate employee using FMLA.

By yelling across the table at a subordinate that she was going to write her up on the following Monday, as well as sending a text to another worker that she should write up the subordinate, the claimant demonstrated a carless disregard for the conduct the employer had a right to expect from supervisors. An employer need not establish financial harm in order to establish misconduct. Under all of the circumstances, the claimant's actions represent carelessness to such a degree of recurrence as to rise to the level of disqualifying job related misconduct. Benefits are denied.

**DECISION:**

The July 26, 2017, (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/rvs