

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHARLENE E IVERY BABA
Claimant

APPEAL 20A-UI-14995-S2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**DES MOINES IND COMMUNITY
SCH DIST**
Employer

**OC: 03/08/20
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

The claimant Charlene E. Ivery-Baba filed an appeal from the November 5, 2020, (reference 03) unemployment insurance decision that denied benefits based upon a decision that claimant was discharged for violating a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on January 20, 2021. The claimant participated and testified. The employer Des Moines Independent Community School District participated through human resources supervisor Nichole Wichman and benefits specialist Rhonda Wagoner. Employer's Exhibits 1-6 were 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: Claimant was employed as a substitute teacher from May 8, 2015, and was separated from employment on February 12, 2020, when she was discharged.

On January 24, 2020, employer received a complaint from the middle school where claimant was assigned to work earlier in the month. The complaint stated that on January 13, 2020, some students would not leave the classroom at break time as the lesson plan stated students should do. The student alleged claimant placed her hands on the student's neck and told him to hurry up. The delay in the complaint being brought to the attention of employer was due to the student being out ill from school and then some days the school was on break. Upon receipt of the complaint, employer investigated it. The investigation included speaking with claimant and receiving written statements from three other students who were present during the incident and corroborated the complaint. (Exhibits 2-5) During the investigation conducted by claimant's supervisor Nichole Wichman, claimant denied the allegation and stated that was not characteristic behavior for her. Claimant testified she cannot remember placing her hands on a student.

Employer discharged claimant for violating its work rules and school district policy regarding conduct; specifically, uncivil conduct; inefficiency, incompetence, or negligence in the performance of duties; inappropriate use of physical means to redirect or address a student; gross misconduct unbecoming an employee; and any other act which endangers the safety, health, well-being of another person, or which is of sufficient magnitude that the consequences cause or act to cause disruption of work or gross discredit to the organization. (Ex. 1) Employer maintains these policies and rules in its substitute reference handbook that substitute teachers receive upon hire. Claimant was aware of the rules and policies.

Employer gave claimant a written warning on September 25, 2019, for violating the following rules and policies: uncivil conduct; inefficiency, incompetence, or negligence in the performance of duties; and any other act which endangers the safety, health, well-being of another person, or which is of sufficient magnitude that the consequences cause or act to cause disruption of work or gross discredit to the organization, for making inappropriate statements and classroom management issues. (Ex. 6) Claimant had allowed students to move about the classroom and made a comment to students about growing up poor and begging for money.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for job-related misconduct.

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 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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

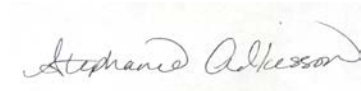
The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 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, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has an interest and duty in protecting the safety of the students. Claimant's behavior was in violation of specific work rules and against commonly known acceptable standards of work behavior. Due to the severity of claimant's behavior, the employer made the decision to terminate claimant. While claimant had received a previous written warning, it was not related to physically touching a student. However, claimant's behavior was contrary to the best interests of employer and the safety of the students and is disqualifying misconduct even without prior warning. As such, benefits are denied.

DECISION:

The November 5, 2020, (reference 03) 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.



Stephanie Adkisson
Administrative Law Judge
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February 10, 2021
Decision Dated and Mailed

sa/scn