

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BARBARA E GREENE
Claimant

DIVERSIFIED SERVICES FOR INDUSTRY
Employer

APPEAL NO. 17A-UI-10682-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/23/17
Claimant: Appellant (1)**

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 12, 2017, reference 07, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 3, 2017. Claimant participated personally. Employer participated by hearing representative Anna Marie Gonzalez and witnesses Angela Ward and Michelle Bender. Employer's Exhibits 1-9 and Claimant's Exhibits A-B and D-H were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on September 5, 2017. Employer discharged claimant on September 14, 2017 because claimant had been allegedly insubordinate to her superiors after repeated warnings had been issued.

Claimant worked as a part-time general laborer for employer. Claimant received multiple counseling reports during her three months working for her dealings with her supervisor and co-workers and insubordinate behavior to her supervisor.

Within a month after claimant had been hired, she received multiple write-ups in July of 2017 based on her dealings with co-workers and clients. Claimant allegedly confronted a co-worker about their work ethic after being specifically told by the supervisor not to do so. When given the write up for this activity, claimant gave the supervisor an ultimatum that she needed to fire another worker who'd been employed for two years, or she would quit. She was given another write up for this action.

On September 6, 2017, claimant addressed her immediate supervisor, complaining about pay, hours, her schedule, and her supervisor. She insulted her manger, co-workers, and supervisor, indicating that the manager was scamming the system to pay for her vacations. She was called in on September 12, 2017 to be given a final warning for these actions. At the time employer

said claimant became very loud and disrespectful to her manager and her supervisor. She called her supervisor, "comic relief", and demanded higher pay and different hours. All these requests were made in an inappropriate manner. She was reminded that pay raises were looked at after 90 days and she hadn't been employed for 90 days. This outburst occurred in a place where the public and employer's client can easily hear what is stated. Claimant's insubordinate actions after warnings led to her termination.

Claimant stated that all of employer's allegations were overblown. Claimant stated that she was simply trying to do her job and asking that other co-workers do their jobs also. She denied that she was being disrespectful, and only called her supervisor comic relief when he came into the meeting laughing and smiling. Claimant also stated that she was asked to work additional hours and the issue of a pay increase had been initially brought up by employer during negotiations and not herself.

Claimant additionally commented that she didn't want to be around her supervisor as he had a domestic abuse charge. She stated that he had never done anything to her or threatened her, but she was bothered because of the unproven charges. The supervisor stated that claimant harassed him about needing to be at court.

REASONING AND CONCLUSIONS OF LAW:

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

In order to establish misconduct as to disqualify a former employee from benefits an employer must establish the employee was responsible for a deliberate act or omission which was a material breach of the duties and obligations owed by the employee to the employer. Rule 871 IAC 24.32(1)a; *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445 (Iowa 1979); *Henry v. Iowa Department of Job Service*, 391 N.W.2d 731, 735 (Iowa Ct. App. 1986). The conduct must show a 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 the employee's duties and obligations to the employer. Rule 871 IAC 24.32(1)a; *Huntoon supra*; *Henry supra*.

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. Here, employer's witnesses were more credible than claimant, who seemed to offer excuses for her inappropriate statements.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning insubordination. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant did not deal with her superiors in a respectful manner and did not follow directions. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated October 12, 2017, reference 07, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn