

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WILLIAM P CHIAFOS
Claimant

F & B CAB COMPANY
Employer

APPEAL 17A-UI-09921-SC
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/03/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

William P. Chiafos (claimant) filed an appeal from the September 26, 2017, reference 01, unemployment insurance decision that denied benefits based upon the determination F & B Cab Company (employer) discharged him for theft of company property. The parties were properly notified about the hearing. A hearing was held in Cedar Rapids, Iowa at 9:00 a.m. on October 19, 2017. The claimant participated personally. The employer participated through Owner Fred Lederle. Claimant's Exhibit A was received without objection. The claimant also offered another document which was not received into the record because it was not properly submitted before the hearing, he did not have copies for all individuals involved, and was not relevant to the present case. Employer's Exhibits 1 and 2 were received over the claimant's objections based on hearsay.

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: The claimant was employed full-time as a Dispatcher beginning on December 28, 2015, and was separated from employment on September 6, 2017, when he was discharged. The claimant reported directly to Owner Fred Lederle.

The employer had a procedure and unwritten policies that dispatchers could receive reduced fare cab rides home from work after their shift and charge the ride to an account maintained by the employer on the employees' behalf. When the employees received their paychecks, they would settle their account with the employer. If an employee could not pay his or her entire account, the employer would accept partial payments.

The claimant would often take a cab home and charge the fare to his account. The claimant was paid on September 1, 2017. His charge account was approximately \$80.00. The claimant did not pay the employer at that time and kept promising to settle his account.

On September 5, 2017, the claimant and Lederle had an argument via telephone about the claimant's charge account and a dispatch that Lederle believed the claimant did not handle correctly. During the conversation, Lederle revoked the claimant's charge privileges as he still had not settled his account and told him that his job was in jeopardy if there were any more issues.

After that conversation, the claimant contacted his co-worker Dawn to ask what she did when she needed a ride home but did not have money. She told him that she just asks if anyone is nearby and can give her a ride home. The claimant also sent a text message to Lederle asking him to tell the cab drivers who owned their own vehicles that they could give the claimant a ride home at their expense. Lederle denied the claimant's request as he did not have control over personally owned vehicles and drivers.

After his shift was over, the claimant asked if any cab drivers were available to give him a ride home. A cab driver, who had previously given the claimant's ride home and charged them to the claimant's account, agreed to take the claimant home. When they arrived at the claimant's house, the cab driver asked for payment and the claimant stated he would catch him later.

On September 6, 2017, the cab driver notified Lederle that the claimant had not paid him the night before for a cab ride home. Lederle discharged the claimant for theft.

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. Benefits are denied.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa Administrative Code rule 871-24.32(1)a provides:

"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 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). 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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

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.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events.

The employer does not offer its employees free rides home from work. Instead, the employer offers its employees discounted rides home and allows them to charge the fare to an account it maintains. The claimant's privileges on this program were revoked. The same day that the employer revoked the claimant's privileges, the claimant took a cab ride home and did not pay for it. The claimant received services from the employer for which he did not pay. That is theft from the employer. Theft from an employer is generally disqualifying misconduct. *Ringland Johnson, Inc. v. Hunecke*, 585 N.W.2d 269, 272 (Iowa 1998). In *Ringland*, the Court found a single attempted theft to be misconduct as a matter of law. In this case, the claimant deliberately disregarded the employer's interest and knowingly violated a company policy or procedure. The claimant engaged in disqualifying misconduct even without previous warning. Benefits are denied.

DECISION:

The September 26, 2017, reference 01, unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn