

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEBRA K BOSSLER
Claimant

APPEAL 15A-UI-10091-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AAA ULTIMATE PAWN
Employer

**OC: 08/09/15
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 31, 2015, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 6, 2015. Claimant participated and Jack Pfaffle testified on claimant's behalf. Employer participated through regional manager Christy Johnson and area manager John Firmature. Employer Exhibit One was admitted into evidence with no objection.

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 full-time as a store manager from January 2, 2015, and was separated from employment on August 14, 2015, when she was discharged.

Approximately a week before discharge, claimant sold multiple (nine) items at a discount of over 35%. Some of the items were sold at a loss. The overall transaction resulted in a total loss of \$15.11, but a loss of profit to the employer of \$2,120.02 (the total amount of the discount provided to the customer). Before giving the customer a discount, claimant did look up the cost of each item. After looking up the cost, claimant then offered the customer a discount for each item. The incident was discovered when the employer was going through its reporting. The employer conducted an investigation into what happened. The employer reviewed the video and audio of the transactions. Prior to the customer coming to the store, Mr. Firmature, claimant's direct supervisor, told her about the customer coming to the store. Mr. Firmature told claimant that she could give the customer a discount. Mr. Firmature never authorized claimant to sell anything at a discount of over 35% or at a loss. Claimant was discharged because she violated the employer's discount policy.

The employer has a policy that items are not generally discounted over 35% and employees, including claimant, cannot sell items for a loss without approval. Claimant was aware of the discounting policy. Claimant had no prior warnings for providing discounts to customers.

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.

It is the duty of an administrative law judge and 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, as the finder of fact, 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. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). 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 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*, 548 N.W.2d 162, 163 (Iowa App. 1996).

This administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used my own common sense and experience. This administrative law judge reviewed the exhibit submitted. This administrative law judge finds the employer's version of events to be more credible than claimant's recollection of those events.

Iowa Code § 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.

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 Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer had a specific discount policy for its employees; items are generally not discounted over 35% and employees, including claimant, cannot sell items for a loss without approval. Claimant was aware of this policy. About a week prior to her discharge, claimant ignored this policy and provided a customer discounts on nine items. Employer Exhibit One. Mr. Firmature had given claimant notice that a customer was coming to the store and it was ok to provide a discount; however, Mr. Firmature did not authorize claimant to exceed the maximum 35% discount rate. Before claimant offered any discount, she looked up the cost of each item. After claimant knew the cost of each item, she then offered a discount to the customer, which the customer accepted. Claimant's argument that she did not determine the percentage of discount on each item to determine if the discount was over 35% or if any item was going to sell below cost is not persuasive. Claimant's argument that she did not know you needed approval to exceed a 35% discount is also not persuasive. Both the claimant and the employer agreed that there was a policy of no discounts over 35%. Claimant's testimony was very clear that she knew about this policy because she testified the employer shoves the policies down the employees face every day. Claimant had been trusted with the ability to discount items, but she could not exceed 35%. It was up to claimant to understand how much of a percentage she was giving each customer. During the incident in question, clearly claimant did not follow the policy, which resulted in the employer not only losing over two thousand dollars in profit, but actually suffering a loss on the entire transaction. Employer Exhibit One.

The employer has presented substantial and credible evidence that claimant provided multiple discounts in excess of 35% (some resulted in the item(s) being sold for less than the cost of the item) without the employer's approval, in direct violation of a known company policy. In violating a known company policy, claimant caused harm to the employer. Selling items at more than a 35% discount or at a loss is contrary to the best interests of the employer. This is disqualifying misconduct without prior warning.

DECISION:

The August 31, 2015, (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 she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs