

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRACY L JENKS
Claimant

CASCADE FARM & HARDWARE LLC
Employer

APPEAL 21A-EUCU-00006-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/01/20
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

Tracy L Jenks, the claimant/appellant, filed an appeal from the December 31, 2020, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 11, 2021. Ms. Jenks participated and testified. The employer participated through Tammy Lemke, human resources generalist. Official notice was taken of the administrative record.

ISSUE:

Was Ms. Jenks' separation from employment a discharge for misconduct or did she voluntarily quit without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Jenks began working for the employer on August 26, 2019. She worked as a full-time cashier/sales associate. Her last day was August 30, 2019.

The week Ms. Jenks worked for the employer she learned that she was pregnant and that she would have to find housing. Ms. Jenks told the owner, Jan, about her situation. Jan told Ms. Jenks to take the weekend off of work so she could find new housing and report to the store manager on September 2. Ms. Jenks was scheduled to work the afternoon of September 2. Ms. Jenks contacted the store manager before her shift on September 2 and informed the manager that she would need an additional day to find housing and that she would have a doctor's appointment later that week. The manager told Ms. Jenks to contact Jan. Before Ms. Jenks could contact Jan, Jan left Ms. Jenks a voice message terminating her employment. The reason Jan gave Ms. Jenks for the termination of her employment was that Ms. Jenks was not a good fit for the employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Jenks was discharged from employment for no disqualifying reason and she did not voluntarily quit.

Iowa Code section 96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

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 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).

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.*

The findings of fact show how the administrative law has resolved the disputed factual issues in this case. The administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using his own common sense and experience.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee’s act is misconduct does not rest solely on the interpretation or application of the employer’s policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

In this case, Ms. Jenks’ short employment with the employer happened at the same time as two major events happened in Ms. Jenks’ life: her pregnancy and her need to find housing. Because of these two life events, Ms. Jenks did not work the weekend after her first week of work. On Monday, September 2, the employer decided to terminate Ms. Jenks’ employment due to a lack of fit. The employer presented no evidence of misconduct by Ms. Jenks. The employer has failed to meet its burden of proof to establish job related misconduct as the reason for the separation. Benefits are allowed.

DECISION:

The December 31, 2020, (reference 02) unemployment insurance decision is reversed. Ms. Jenks was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Daniel Zeno
Administrative Law Judge
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February 25, 2021
Decision Dated and Mailed

dz/scn