

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GRANT D HILL

Claimant

JAM EQUITIES OF WATERLOO LLC

Employer

APPEAL 19A-UI-05905-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/09/19

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On July 25, 2019, Grant D. Hill (claimant) filed an appeal from the July 15, 2019, reference 06, unemployment insurance decision that denied benefits based upon the determination JAM Equities of Waterloo, LLC (employer) discharged him for violation of a known company rule. The parties were properly notified about the hearing. A telephone hearing was held on August 15, 2019 and consolidated with the hearing for appeal number 19A-UI-05906-SC-T. The claimant and his former co-worker, Brett Schroader, participated. The claimant identified four other witnesses who were contacted multiple times for the hearing but did not answer or disconnected shortly after answering. The employer participated through General Manager Christy Mitchell, Franchise Owner Asif Poonja, and District Manager Ricco Mitchell.

The Employer's Exhibit 1 was received without objection. The claimant stated he mailed recordings to both the Appeals Bureau and the employer; however, neither received the recordings. The claimant was given the option of proceeding without the recordings or postponing the hearing and he elected to proceed. Both parties identified documents throughout the hearing that it wished to submit after the hearing; however, as neither party followed the instructions on the hearing notice with regard to those documents, they were not admitted into the record and the record was not left open to allow the parties the opportunity to offer the documents.

On August 15, after the record closed, the claimant made a motion via email to strike the employer's testimony regarding the end-of-day report as the employer did not provide the end-of-day report for the hearing. The claimant's motion is denied. While the physical documents may have been the best available evidence, testimony from the document custodian is also evidence normally allowed and relied upon in administrative proceedings. It is up to the fact-finder, in this case the administrative law judge, to weigh the evidence in the record when making her decision.

On August 19, the claimant requested to reopen the record via email stating his witness Ericka Williams was in the hospital at the time of the hearing which is why she did not answer. The claimant was given until 12:00 p.m. on August 22 to provide proof that Ms. Williams was in the hospital at the time of the hearing. The claimant did not provide the proof requested. The claimant's request to reopen the record is denied.

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 Manager at the Coralville, Iowa location beginning on December 6, 2018. He transferred to the Waterloo, Iowa store sometime after March 13, 2019. He was separated from employment on June 11, 2019, when he was discharged.

The employer is a franchise and required to be open certain hours per the franchise agreement or it could be subject to fine. Per the employer's rules, the only people allowed to close a store early are Franchise Owner Asif Poonja and District Manager Ricco Mitchell. The stores where the claimant worked were scheduled to be open until 10:00 p.m. One of the claimant's job duties included closing the store. Typically, employees could start working on closing duties around 8:30 p.m. or 9:00 p.m., but would still be there 45-minutes to an hour after close finishing the closing procedure. One of the closing duties was running the end-of-day report. Once that report is run, the registers display a notice that the store is closed and no further sales can be entered into the register. The very last thing the manager does before leaving is set the security system and lock the doors from the outside.

On March 13, 2019, the claimant was the manager on-duty at the Coralville location. He locked the lobby so guests could not enter at 8:30 p.m. to begin the cleaning required at closing. The following morning General Manager Christy Mitchell received a phone complaint from a customer who reported the store was closed. Ms. Mitchell spoke to the claimant and explained the store is never supposed to close early and that he needed permission from Mr. Mitchell.

On June 9, Mr. Poonja received notice that the security alarm at the Waterloo store was set at 10:06 p.m. He felt that was early given the number of closing duties to be performed. He logged into the system and reviewed the end-of-day report from the store and discovered the claimant had run the report at 9:00 p.m., an hour before the store was set to close. Mr. Poonja notified Mr. Mitchell about the situation and advised him the claimant was to be suspended for the infraction.

On June 10, Mr. Mitchell contacted the claimant to ask about the situation. The claimant denied closing the store early. Mr. Mitchell told the claimant they would address the situation the following day. The claimant was the closing manager that evening. That night a customer pulled up to the store at 9:14 p.m. and noticed the lights in the drive thru were off and the side door was locked. She drove to the drive thru, had a discussion with the claimant, and then drove off without placing an order. That evening, Mr. Poonja again reviewed the end-of-day report and saw the claimant had run the report at 9:06 p.m.

The next morning, the customer from the night before reported that the store had been closed when she arrived to order food. Based on the customer complaint and other information available, the employer discharged the claimant for closing the store early.

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 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).

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). 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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

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 claimant's denial that he did not close the store early on June 10 is not credible in light of the customer complaint. The claimant acknowledged the lights in the drive thru were off, a lobby door was locked, and he spoke to the customer that came through the drive thru at 9:14 p.m. The claimant testified he told her the store was still open and offered to let her place an order. However, that is not credible based on the actions of the customer after speaking with the claimant. Specifically, she did not place an order after speaking with the claimant and then contacted the employer the following day. The employer's testimony that she reported the store was closed at 9:14 p.m. is credible when considering the totality of the interaction.

The employer has met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. The employer has presented credible evidence that the claimant closed the store early after having been warned. The claimant knew following the March 13 incident that he did not have the authority to close a store early. Accordingly, benefits are denied.

Even if the claimant had not been given any prior warning, his actions would still be disqualifying. The employer has an interest in complying with its franchise agreement and providing customers access to its products during normal business hours. The claimant closed the store early exhibiting a deliberate disregard for the employer's interest.

DECISION:

The July 15, 2019, reference 06, 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