

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CARMEN J WOODS

Claimant

APPEAL 16A-UI-12571-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRAFT HEINZ FOODS COMPANY

Employer

OC: 10/30/16

Claimant: Respondent (1)

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

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the November 16, 2016, (reference 01) unemployment insurance decision that allowed benefits based upon a determination that claimant was discharged from employment for no disqualifying reason. The parties were properly notified of the hearing. A telephone hearing was held on December 12, 2016. The claimant, Carmen Woods, participated. The employer, Kraft Heinz Foods Company, participated through Jackie Jones, senior HR business partner. Employer's Exhibits 1 through was received and admitted into the record without objection.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?

Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

Can charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a production team member, from September 22, 2014, until October 28, 2016, when she was discharged for violating the employer's funeral leave policy.

On October 28, claimant spoke to Jones about an FMLA leave issue. During this conversation, claimant asked Jones why she received an attendance point for attending a funeral back in April 2016. During this conversation, claimant referred to the deceased person whose funeral she attended in April as her grandfather. Jones pulled claimant's file and found that claimant had requested and received one day of unpaid leave to attend the funeral of William Thomas, who she identified at the time as her uncle. (Exhibit 8) The employer maintains claimant is not a biological relative of Thomas, nor is she related to Thomas through marriage. Rather, Thomas was a close friend of claimant's family. While investigating this issue, Jones learned that back

in October 2014, claimant received one day of unpaid leave to attend the funeral of Verna Beattie, who she identified at the time as her aunt. (Exhibit 13) Claimant is not biologically related to Beattie, nor is she related to Beattie through marriage.

The employer did not provide a copy of its unpaid funeral leave policy, and claimant testified that she was not aware of any such policy. Jones testified that under the policy, an employee is allowed to take unpaid leave and not receive attendance points in connection with the death of an aunt or uncle. This policy is included in the employee handbook and the union contract. Jones testified that sometime in the past, the employer had a large-scale investigation into employees taking protected funeral leave for the funerals of individuals who were not biologically related to them. Jones believes claimant was employed when this investigation occurred, and she should have been on notice that her actions were not permissible. Claimant had never been warned for violating this policy in the past.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$2694.00, since filing a claim with an effective date of October 30, 2016, until the week ending December 10, 2016. Specifically, claimant has received gross weekly benefits of \$449.00 each week for six weeks. The administrative record also establishes that the employer did participate in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

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).

The employer has the burden to prove the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law. *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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). 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.

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).

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.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds claimant provided more credible testimony than the employer regarding the end of her employment. The administrative law judge does not believe claimant was aware of any rule that she must be related to an aunt or uncle through biology or marriage in order to take unpaid leave and attend the funeral. The employer had never previously warned claimant for violating this policy, and the employer provided no evidence confirming that

claimant was even aware such a policy existed. The employer has not met its burden of proof to show claimant was discharged from employment for disqualifying misconduct. Benefits are allowed. As claimant is entitled to benefits based on this separation from employment, the issues of overpayment, repayment, and chargeability are moot.

DECISION:

The November 16, 2016, (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The issues of overpayment, repayment, and chargeability are moot.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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