

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TAMMY LOVE
Claimant

WEST LIBERTY FOODS LLC
Employer

APPEAL 22R-UI-03447-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/04/21
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant, Tammy Love, filed an appeal from the August 27, 2021, (reference 02) unemployment insurance decision that denied benefits based upon the conclusion she was discharged from work on June 10, 2021 for loafing on the job. The parties were properly notified of the hearing. A telephone hearing was scheduled to be held on October 22, 2021 at 9:00 a.m. The claimant registered but she did not answer at the telephone number she registered at the time of the hearing. The administrative law judge issued a default decision, 21A-UI-19338-SN-T. The claimant appealed the administrative law judge's decision to the Employment Appeal Board.

On January 26, 2022, the Employment Appeal Board remanded the case back to the administrative law judge. A telephone hearing was held on March 4, 2022. Exhibits 1, 2, 3, 4, 5, 6, 7, and 8 were received into the record. The claimant participated. The employer participated through Human Resources Supervisor Monica Dyar.

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 worked as a quality assurance technician from January 27, 2021, until her employment ended on June 10, 2021, when she was discharged. The claimant's immediate supervisor was Quality Assurance Supervisor Chris Gammack.

The employer has an employee handbook. The employee handbook states it is a major violation to be on the clock and not performing assigned work. The claimant acknowledged receipt of the employee handbook in April 2021.

On June 6, 2021, the claimant came in to work on a day that she was not typically scheduled because she switched with Quality Assurance Technician Christ Garnet. There was a tense conversation among the quality assurance technicians about how work would be assigned for the day. One of the technicians was using curse words in frustration because another technician called in for the day. The employer provided still images from the employer's security camera footage on that date. (Exhibit 5) The camera footage shows the claimant going to her locker at 4:17 p.m. She then moves down a hallway towards near an area of the plant called the south bull pen and into a utility room at 4:21 p.m. She keeps moving to an area near the human resources department offices at 4:22 p.m. The claimant then retraced her steps back to her locker at 4:26 p.m. The claimant then proceeded to walk through the breakroom area and left the building at 4:28 p.m. The claimant walked out to a patio area outside of the plant to sit down at 4:33 p.m.¹ She remained there until 6:55 p.m. when she started returning into the plant. The claimant then returned to her locker at 6:57 p.m. She walked down the hallway past the south bullpen at 6:58 p.m. to get to the human resources department area near the utility room at 7:06 p.m. The claimant returned to her locker at 7:07 p.m. Throughout this entire period, the claimant does not appear to be doing anything productive. The claimant did not use the sign out log on that day. The employer provided a copy of the sign out log for June 6, 2021. (Exhibit 3) The employer provided a copy of the claimant's badge scan information from that day which shows she clocked in at 3:09 p.m. and did not clock out until 8:52 p.m. (Exhibit 4)

At 9:37 p.m. on June 6, 2021, Mr. Gammack received a complaint in an email from another quality assurance technician.² The quality assurance technician stated that he or she had to perform quality control checks in several different areas because the claimant was not working. Mr. Gammack forwarded the email to Ms. Dyar. He asked Ms. Dyar to check security camera footage from the period subject to the complaint which was from 4:00 p.m. to 7:00 p.m. The employer provided copies of these emails. (Exhibit 2)

On June 7, 2021, Ms. Dyar reviewed the camera footage from that period. Ms. Dyar sent an email to Ms. Meek and Mr. Gammack with a description of what she saw in the camera footage. Ms. Dyar asked Ms. Meek and Mr. Gammack to let her know if there were any quality control checks documented by her between 4:16 and 7:07 p.m. Mr. Dyar stated she understood that there are quality assurance checks that are performed outside of the plant, but she added that the claimant had her bag with her. The employer provided a copy of these emails. (Exhibit 2) Mr. Gammack later informed Ms. Dyar that none of the quality assurance checks had been performed by the claimant on that night.

On June 8, 2021, Ms. Dyar interviewed the claimant regarding what occurred on June 6, 2021. The employer provided Ms. Dyar's notes from the investigative interview. (Exhibit 6) The claimant told Ms. Dyar that she ordinarily took her break around 5:30 p.m. The claimant told Ms. Dyar she could not remember when she took her break for that day. The claimant explained that after the argument in the quality assurance office, she decided to go to the north bullpen to take some optional training courses from the employer's application, Ulti-Pro. Later in the interview, the claimant acknowledged that the training courses were not accessible via Ulti-Pro. The claimant alleged she printed off the materials. The claimant said she could not recall what she did after taking the training courses. The claimant told Ms. Dyar she was not sure what she was supposed to do on that day because she was filling in for Mr. Garnet. After the investigative interview, the claimant was suspended pending an investigation into the incident occurring on June 6, 2021.

¹ While it is difficult to see the claimant in this picture, it is clear that it is the same person because you can see her leaving the plant moments before the picture showing a woman leaving the plant.

² The employer redacted this individual's name.

On June 10, 2021, Quality Assurance Manager Kristy Meek, Ms. Dyar, Mr. Gammack and Human Resources Manager Melissa Stiffler discharged the claimant. They reasoned that the claimant had taken an extended unauthorized break while on the clock on June 6, 2021.

Other quality assurance technicians have taken unauthorized breaks lasting 15 minutes in duration. These quality assurance technicians received counseling for taking unauthorized breaks. They were not terminated because they did not leave the plant and these unauthorized breaks were much shorter in duration.

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.

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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). 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). 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 his own common sense and experience, the administrative law judge generally finds the employer's testimony and exhibits more credible than the claimant's allegations. He makes this credibility finding for the following reasons:

1. The claimant initially alleged that it was not possible to conclude she was the individual depicted in the camera footage. Later in the hearing, the claimant acknowledged that she was the individual in camera footage showing her retrieving items from her locker. While the claimant is correct that the individual in the outside stills cannot be seen as easily, the individual is the claimant because the camera footage followed her out to that area in several minute increments until she is walking out of the plant.
2. At the same time, the claimant alleged she was performing work during the whole period in dispute between the two parties. Again, the camera stills show the claimant moving through the plant and outside. She is not performing any kind of work-related task she described in any of these stills, even though she is captured in them every couple of minutes. Of course, there is also considerable tension, if not outright contradiction between this allegation and the claimant's previous allegation that she was not the individual who walked outside.
3. The claimant also claimed that Mr. Gammack a few days after her hire date allowed her to leave the plant for hours without consequence. Although the employer did not make Mr. Gammack available to testify, the administrative law judge finds that this occurred unlikely based on the June 7, 2021, email chain provided by the employer. Specifically, it shows that Mr. Gammack personally requested Ms. Dyar to investigate the situation after receiving a complaint from another quality assurance technician. Furthermore, in

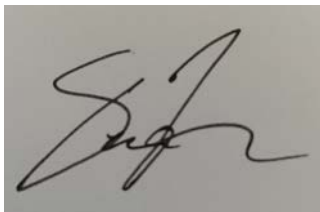
the context of the claimant's previous allegations, this appears to be nothing more than self-serving testimony.

4. The claimant finally contends she was justified in leaving because the conversation among quality assurance technicians constituted a hostile work environment on June 6, 2021. Yet, when the claimant was asked what she meant, she merely stated that another quality assurance technician was mad that another quality assurance technician and was yelling. The claimant denied this anger was directed at her. Such a description does not justify leaving the plant for hours and performing no work. Again, there is considerable tension if not outright contradiction with the claimant's previous allegations denying she left the plant or if she had left that it was to perform work.

The claimant's conduct on June 6, 2021, constitutes theft from the employer. The claimant performed no assigned work for hours and remained on the clock. 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. The claimant engaged in disqualifying misconduct even without previous warning. Benefits are denied.

DECISION:

The August 27, 2021, (reference 02) 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.



Sean M. Nelson
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March 29, 2022
Decision Dated and Mailed

smn/scn