

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TONYA J BRANDT**  
Claimant

**ALL STATES AG PARTS INC**  
Employer

**APPEAL 17A-UI-04682-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/09/17  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 27, 2017, (reference 01) unemployment insurance decision that denied benefits based upon her discharge for conduct not in the best interest of the employer. The parties were properly notified of the hearing. A telephone hearing was held on May 22, 2017. The claimant participated and testified. The employer participated through Distribution Manager, Bob Koren, Human Resource Administrator, Bonny Clough, and Assistant Distribution Manager, Jesse Nessel.

**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 material handler from February 15, 2016, until this employment ended on April 11, 2017, when she was discharged.

On April 10, 2017, an employee approached Nessel and told him she was feeling harassed by claimant about having missed work the previous week. Specifically, the employee reported claimant had asked her where she was the previous week in a manner the employee found agitated and aggressive. The employee was very upset, as she had been off work due to a serious family medical situation. Just ten days prior, on March 31, 2017, claimant had received written disciplinary action for her interactions with another coworker and management. Koren testified in that situation he observed claimant and the other employee screaming at each other, which they continued to do even after he instructed them to stop. Koren was eventually able to get both employees to stop screaming, but the other employee was so angry and upset she asked to leave for the remainder of the day. Koren testified he instructed claimant to go back to work, which she initially began to do, but then turned around and began to engage with them again, accusing him and the other employee of talking about her behind her back. Koren again instructed claimant to get back to work, which she then did. Koren testified this was not the first time he observed claimant behave this way, so he made the decision to write her up, as such

conduct violates the employer's policies regarding a hostile or harassing work environment. The warning contained an advisement that future situations like this could lead to termination. Claimant denied she was ever screaming during this incident and testified she just wanted to speak to Koren to tell him her version of events.

Nesset testified when he approached claimant to discuss her interaction with her coworker on April 10, he explained to her that this was exactly the type of behavior he and Koren were talking about when she was issued the written warning. Claimant told Nesset she was just asking questions and he advised her that she needed to be careful because her interaction may be perceived differently. Nesset then returned to his office. Shortly thereafter the employee came to Nesset's office, in tears, requesting to be moved to a work area away from claimant. The employee reported that claimant approached her again and refused to drop things. Nesset assigned the worker to a different area and went to speak with claimant again. According to Nesset he explained to claimant that what she was doing was not appropriate and she became confrontational with him. Nesset testified claimant approached him in a manner that caused him to physically back away from her, stumbling as he backed up. According to Nesset he instructed claimant to go back to work, but she continued to move towards him, again causing him to physically back up. Nesset again told claimant to go back to work, which she did. Nesset reported the incident to Koren and the decision was made to terminate claimant's employment.

In regards to the April 10 incident, claimant testified she did not mean to upset her coworker, but was just making conversation. According to claimant she approached her coworker after she was spoken to by Nesset the first time to apologize and ask her why she would accuse her of acting that way. Claimant testified her coworker would not speak to her so she went back to work. Claimant denies she was at all aggressive throughout the entire interaction with her coworker or Nesset.

#### **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).

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.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer also has an interest in maintaining an orderly work environment. There were two occasions in a ten day period where employees had their work disrupted by claimant's behavior. The employer has presented substantial and credible evidence that claimant

continued to have negative interactions with her coworkers after having been warned. Claimant was advised on March 31 that her behavior was unacceptable, claimant was reminded of this by Nessel on April 10, but nevertheless continued to engage her coworker. Despite these warnings, claimant continued to engage in similar behavior. This is disqualifying misconduct.

**DECISION:**

The April 27, 2017, (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 is otherwise eligible.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/scn