

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

LEANNA J ARMSTRONG
Claimant

APPEAL NO: 18R-UI-09930-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA KFC INC
Employer

OC: 07/15/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 30, 2018, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was first scheduled but not held on August 31, 2018. The claimant/appellant failed to participate and the appeal was dismissed. The claimant successfully requested reopening to the Employment Appeal Board (EAB) who remanded the matter for a new hearing. After proper notice, a second hearing was scheduled and conducted by telephone on October 15, 2018. The claimant participated personally. The employer participated by way of Marshall Brandt, area coach. Employer Exhibits 1-3 were admitted into evidence. (Employer Exhibit 3 consisted of a CD).

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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 employer operates a Kentucky Fried Chicken restaurant. The claimant was employed part-time as a customer service crew member and was separated from employment on July 13, 2018, when she was discharged for theft (Employer Exhibit 1).

When the claimant was hired, she received training on the employer policies, including cash handling and that theft will result in immediate discharge. She had no prior warnings before discharge. The final incident occurred on July 10, 2018 during the evening shift, and was recorded through video surveillance camera (Employer Exhibit 3).

On July 10, 2018, a customer called the store to complain that he did not receive the appropriate cash back for his transaction, and instead, only \$1.00. The customer subsequently sent a second complaint, after the claimant's separation (Employer Exhibit 2) outlining the sequence of events, when he was unsatisfied with the employer's response to the issue.

According to the complaint, the claimant failed to properly administer change, and withheld the receipt (Employer Exhibit 2). Video surveillance reflects the claimant interacting with a customer, taking cash, placing it in the register, then pressed buttons on the computer. She then handed a \$1.00 bill to the customer, picked up several other bills, wrapped them in the register tape and placed them below the register out of sight (Employer Exhibit 3). Mr. Brandt reported the placement of the wrapped receipt and bills is near the claimant's personal purse.

The claimant denied stealing and stated rather, that she had been given a \$1.00 tip. She did not have an explanation for why she removed several (not one) bills. She also opined that she had been set up by a former co-worker who she had "snitched" on, and had threatened to get her back. She did not explain she had received a tip when Mr. Brandt confronted her about the transaction and showed her the surveillance video.

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 law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

"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).

What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App.

1984). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

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.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

Honesty is a reasonable, commonly accepted duty owed to the employer. 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.

The claimant in this case was discharged for removing cash from the register and concealing it under the register near her purse. This resulted in a customer complaint when they did not receive the anticipated money back from their order. The video surveillance clearly shows the claimant removing more than a single dollar, as the claimant alleged she removed as a "tip" (Employer Exhibit 3). The claimant offered no credible explanation for why she removed multiple bills before concealing them in the register paper.

It cannot be ignored that the claimant was performing cashier service for a Kentucky Fried Chicken store, which generally is not associated with tipping such as waitressing in a full service restaurant or bartending. Further, the administrative law judge is not persuaded that a customer would take the efforts to complain twice about money not returned if it was intended to tip her.

The claimant failed to provide sufficient evidence to support her assertions. In contrast, the employer's surveillance footage clearly shows the claimant removed several dollar bills, and hid them outside of the register. Removal of money from the cash register to which she was not entitled constitutes theft. Therefore, based on the evidence presented, the administrative law judge is persuaded 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 July 30, 2018, (reference 01) 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.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn