

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HEATHER M HESSONG
Claimant

LEGACY HOUSE LLC
Employer

APPEAL 19A-UI-01057-AW-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/06/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Heather Hessong, Claimant, filed an appeal from the February 4, 2019 (reference 01) unemployment insurance decision that denied benefits because she voluntarily quit work with Legacy House, LLC due to dissatisfaction with work conditions. The parties were properly notified of the hearing. A telephone hearing was held on February 21, 2019 at 1:00 p.m. Claimant participated. Rachel Felton was a witness for claimant. Employer participated through Cindy Brummer, Owner, Administrator and Registered Nurse. Employer's witnesses included Mark Timmerman, Alysha Goodrich and Michelle McKibbin. Claimant's Exhibits A and B were admitted. Employer's Exhibits 2 – 11 were admitted.

ISSUE:

Whether claimant's separation was a discharge due to 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 direct care worker and medication manager from March 22, 2018 until her employment with Legacy House LLC ended on January 11, 2019. (Brummer Testimony) Claimant's direct supervisor was Cindy Brummer. (Brummer Testimony)

On January 10, 2019, claimant sent a text message to employer stating that she could not work that day because she needed to pick up her sick child from school. (Exhibit 10, p. 1) Claimant named the child in the text message. (Exhibit 10, p. 1) Employer requested documentation from the school reflecting the child was sent home due to illness. (Exhibit 10, p. 2) Claimant did not provide documentation. (Brummer Testimony) The child's school confirmed that the child was at school all day on January 10, 2019. (Timmerman Testimony) Employer terminated claimant's employment on January 11, 2019 for failure to produce the requested documentation and related dishonesty. (Claimant Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant did not voluntarily quit her employment but was discharged for disqualifying, job-related misconduct. Benefits are denied.

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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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. 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). 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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee.

Insubordination does not equal misconduct if it is reasonable under the circumstances. The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.* 367 N.W.2d 300 (Iowa Ct. App. 1985). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. *Woods v. Iowa Dep't of Job Serv.*, 327 N.W.2d 768, 771 (Iowa 1982).

It is the duty of the administrative law judge, as the trier of fact, 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 evidence you believe; 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 I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the employer's version of events to be more credible than the claimant's version of those events.

Claimant's statement to employer regarding the reason for her absence on January 10, 2019 was not truthful. Honesty is a reasonable, commonly accepted duty owed by employees to their employers. Claimant's dishonesty with employer was a material breach of her duty to her employer and a deliberate violation of the standards of behavior the employer had a right to expect from her. In the alternative, claimant's refusal to provide documentation from the school was insubordination. Employer's request for claimant to provide documentation was reasonable. Claimant's refusal to provide the requested information was not. Claimant could not provide the documentation requested, because claimant was dishonest about her child being absent from school due to illness. Claimant's refusal to provide the documentation was not in good faith or for good cause.

Claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

DECISION:

The February 4, 2019 (reference 01) unemployment insurance decision is affirmed. Benefits are denied until such time as the claimant works in and has been paid wages for insured work equal to ten times claimant's weekly benefit amount.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/rvs