

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SARAH BROMLEY
Claimant

EQUIFAX INC
Employer

APPEAL 22A-UI-00083-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/17/21
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, Sarah Bromley, filed an appeal from the November 17, 2021, (reference 02) unemployment insurance decision that denied benefits based upon the conclusion she was discharged for work-related misconduct. The parties were properly notified of the hearing. A telephone hearing was held on January 20, 2022. The claimant participated and testified. The employer participated through Vice President of Human Resources Pleasure Allen.

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 full-time senior fulfillment associate for the employer, Equifax Inc., from February 26, 2018, until this employment ended on October 22, 2021, when she was discharged. The claimant's immediate supervisor was Quality Assurance Front Line Manager Brooke Crockett.

In her role, the claimant responded to calls in a cue. These calls were routed automatically through the employer's system. During times in which no calls were sent to her, the claimant was tasked with performing other non-call related duties.

The employer has a code of conduct policy. In that code of conduct policy, employees are prohibited from pausing, avoiding, or otherwise disrupting the routing of calls to their station. If an employee noticed a problem with the system, they are supposed to inform management through chat or in some other manner, so the issue can be corrected. The claimant is aware of this policy because among other things the employer has trained its employees on the concept of call avoidance. If an employee is taking a break, then that also needs to be specifically designated in the system.

On October 13, 2021, the claimant's computer showed she remained on her last call after it was over for an additional 10 minutes and 59 seconds.

On October 14, 2021, the claimant's computer showed she remained on her last call after it was over for an additional 9 minutes and 41 seconds. During that timeframe, the claimant was applying for internal positions posted within the employer's organization.

On October 18, 2021, the claimant's computer showed she remained on her last call after it was over for an additional 19 minutes and 8 seconds. The claimant was working in non-call related tasks for that period before returning to the call cue.

On October 19, 2021, the claimant's computer showed she remained on her last call after it was over for an additional 47 minutes and 39 seconds. The claimant was applying to other internal job positions. She was also performing non-call related tasks. On that day, another associate noticed these circumstances which triggered an internal audit of the claimant's call history. As part of that audit, the employer looked at 15 calls which resulted in the information displayed above regarding other days the claimant was avoiding the call cue.

On October 21, 2021, the claimant was informed she was being suspended due to suspicion that she had been engaging in call avoidance. The claimant informed Ms. Crockett that she had been experiencing a system glitch that could explain the circumstances discovered by the audit. This was the first time the claimant had reported that she had been experiencing a glitch in the system. The employer conducted an investigation and could not corroborate that a system glitch explained the circumstances discovered by the audit.

On October 22, 2021, Senior Director Verification Services Jason Schwickerath and Ms. Crockett determined that the screen recordings demonstrated she was intentionally avoiding additional calls. Given that determination, the employer terminated her employment.

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.

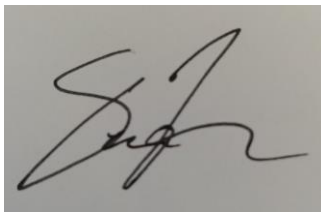
First, the administrative law judge does not find the claimant's testimony that she was unaware she was stuck on a call. He makes this finding because the administrative law judge believes she would have known the call was over when the customer she was speaking to stopped speaking. When the administrative law judge asked the claimant why this would not signal she was at the end of the current call, the claimant did not offer any credible explanation.

Second, the administrative law judge does not find the claimant's testimony that she was unaware of the call avoidance rules credible. The claimant conceded that she was trained on the idea that she could not pause calls, so that she could attend to other matters. The administrative law judge finds this concession to be sufficient to show she was on notice for the broad idea that if there was a call in cue or an expectation of a call, that she would attend to the call first.

Although the employer did not warn the claimant, the circumstances described in the hearing suggest the claimant's behavior was misconduct per se because she was performing non-work functions, such as applying to other positions, while avoiding additional calls. The claimant did not offer credible testimony or evidence suggesting her submitting job interviews was permissible. The claimant engaged in intentional work-related misconduct. Benefits are denied.

DECISION:

The November 17, 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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February 18, 2022
Decision Dated and Mailed

smn/mh