

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RONALD PINYAN
Claimant

CASEYS MARKETING COMPANY
Employer

APPEAL 17A-UI-05024-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/23/17
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 9, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for failure to follow instructions in performing his job. The parties were properly notified of the hearing. A telephone hearing was held on Tuesday, May 30, 2017. The claimant, Ronald Pinyan, participated, and witnesses Jason Perez and Steven Muggenberg also testified on claimant's behalf. The employer, Casey's Marketing Company, participated through Bill Brauer, Warehouse Manager of Ankeny Distribution Center. Employer's Exhibits 1 through 13 were received and admitted into the record without objection.

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, most recently as a Heavy Duty Warehouseperson, from November 23, 2012, until April 21, 2017, when he was discharged for an incomplete order. Claimant filled orders in the warehouse with the assistance of a voice picking system by receiving and responding to voice commands and placing items from the warehouse onto a pallet. Brauer testified that orders range from one pallet filled with items to three pallets filled with items. On April 20, claimant filled an order that was 103 cases short when it was delivered. While Brauer's testimony and the Corrective Action Statement documenting the incident list the missing cases at 103, another document the employer submitted shows claimant was missing 107 cases. (Exhibit 2) The employer discovered the short order on the morning of April 21. The Corrective Action Statement documenting this final incident states that claimant reported he was "picking ahead" at the time, which led him to miss items for the order. (Exhibit 6) Brauer explained that sometimes a warehouse employee will memorize certain check digits from the voice picking system and report through the systems a task has been completed before the worker actually performed the task. The employer submitted Bills of Lading for orders that claimant had shorted in November 2016. (Exhibits 10 through 13) However, the employer did not provide the Bill of

Lading for the April 20 order. Claimant had been warned during his employment for shorting between two and ten items on an order. (Exhibits 7 and 8)

Claimant denies he was picking ahead that night, and he denies that he would have said this to the employer. Claimant's discharge was communicated to him via telephone, and he was not given an opportunity to read or sign the Corrective Action Statement. Claimant testified that he had two coworkers, Perez and Muggenberg, assisting him with filling the order that night. Muggenberg testified that claimant's headset volume was loud enough that he could hear the commands, even though claimant was the person actually wearing the headset. Muggenberg was surprised when he heard how many items were missing from the order, as the standard order around that time was between 150 and 200 pieces. Claimant believes the April 20 order was for 208 pieces. Claimant testified that the employer never told him what items were missing from the order. Additionally, he stated that he does not know if the employer ever reviewed the dock camera footage or spoke to his witnesses.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.32(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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. 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 assess points or impose discipline up to or including discharge for the incident under its policy.

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.* The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976).

Here, claimant provided reasonable and consistent testimony regarding the events related to his separation from employment. He also provided two witnesses. Muggenberg testified that he could hear claimant's headset and witnessed claimant respond to the voice prompts as they were given. He also provided believable testimony regarding the average size of an order and explained that he was surprised so many items could have been missing from claimant's order. The employer provided inconsistent amounts for the total number of items missing from the April 20 order. Additionally, the employer did not provide any documentation (such as a Bill of Lading, Invoice, or similar) showing the order that claimant filled and the items he failed to include.

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds claimant's testimony more credible than the employer's evidence. The evidence presented in the hearing does not conclusively establish that claimant carelessly failed to include approximately 100 items for an order he was pulling. Claimant's past issues with incomplete orders had involved far fewer missing items, and the employer did not present any reasonable explanation for how claimant would fail to include such a significant quantity for the order. The employer did not meet its burden of proving claimant was discharged for disqualifying, job-related misconduct. Benefits are allowed.

DECISION:

The May 9, 2017 (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn