

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARISSA A POMAVILLE
Claimant

R C CASINO LLC
Employer

APPEAL 17A-UI-09032-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/30/17
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 28, 2017, (reference 01) unemployment insurance decision that denied benefits based upon her discharge for dishonesty in connection with her work. The parties were properly notified of the hearing. A telephone hearing was held on September 22, 2017. The claimant participated and testified. The employer participated through Director of Human Resources Jason True. Employer's Exhibits 1 through 5 were received into evidence.

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 catering coordinator from April 13, 2016, until this employment ended on August 2, 2017, when she was discharged.

On July 27, 2017, claimant received a coaching following an incident where she failed to reserve a room for a client after an email was sent to her requesting her to do so. (Exhibit 2). During the coaching claimant told the employer she did not believe she had received the email from the client requesting the reservation or an email from her supervisor following up on the situation. (Exhibit 3). During the coaching meeting claimant indicated she would double check her email when she returned to her desk.

Following the meeting, claimant returned to her desk and checked her email. Claimant testified she was able to find the email sent to her by the customer, but stated she was unaware of a second email sent by her supervisor. Once claimant located the email in question she deleted it and then went in to her deleted messages box and deleted the email a second time from that box. The claimant did not mention she had found the email to her supervisor or anyone else. Claimant testified she deleted the email from her inbox because she no longer needed it and deleted it a second time out of frustration with herself. She testified she did not mention it to the

employer because the situation had been dealt with and she did not think it was necessary to mention.

The employer testified claimant's actions were only discovered upon an investigation conducted by the IT department. Following the meeting on July 27, the employer was concerned that claimant had not received the emails in question and asked the IT department to investigate. The IT department was able to do a search of claimant's email and found she had deleted both the email from the customer and follow-up email from her supervisor from her inbox and her deleted mail box immediately after the coaching meeting. (Exhibits 1 and 4). Based on this information, the employer concluded claimant had been dishonest with them. Given the nature of the employer's business in the heavily regulated gaming industry, dishonesty by employees is prohibited, as is destroying data which the company may need to conduct its business. (Exhibit 5). Claimant received a copy of these policies, located in the employer handbook. Once the employer concluded claimant had deliberately deleted the emails from her inbox and deleted mail box, it made the decision to end her employment based on her dishonesty.

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 claimant insisted there had been only one email that she deleted, however, the employer's records clearly show two emails were recovered. Additionally, the fact that claimant did not immediately notify the employer of her mistake once it was discovered, but instead attempted to remove any trace of the emails from her mailbox, lends credibility to the employer's conclusion that claimant was engaging in deliberate dishonesty.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that claimant deliberately attempted to permanently delete the emails she received rather than acknowledging her mistake. It is reasonable of the employer to expect that its employees will be honest and forthcoming. Claimant's decision to delete the emails violated its policy against dishonesty and the destruction of information that may be needed to conduct business. This conduct was deliberate and is disqualifying.

DECISION:

The August 28, 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 has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs