

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARK D MARTIN
Claimant

NORTH CENTRAL IOWA SERVICE LLC
Employer

APPEAL 23A-UI-06488-PT-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/04/23
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge from Employment
Iowa Code § 96.5(1) – Voluntary Quit from Employment

STATEMENT OF THE CASE:

Claimant filed an appeal from the June 23, 2023 (reference 01) unemployment insurance decision that denied benefits based on a determination that claimant voluntarily quit his employment without good cause attributable to the employer. The parties were properly notified of the hearing. A telephone hearing was held on July 17, 2023. The claimant participated personally. The employer participated through Store Manager Joe McCullough. The administrative law judge took official notice of the administrative record.

ISSUE:

Did the claimant quit the employment without good cause attributable to the employer or was he discharged for reasons related to job misconduct sufficient to warrant a denial of unemployment benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer On June 8, 2020. Most recently, claimant worked full-time hours as an assistant store manager. Claimant's employment ended on May 29, 2023, when he was discharged.

On claimant's final day of work, he arrived at the store to find that the stool he sat on while working at the checkout counter was missing. Claimant found the store manager, who had been hired only one-week prior, and asked the manager why his stool was missing. The manager told claimant that the store had received complaints about poor customer service and that claimant could no longer sit while working at the checkout counter. Claimant explained that he had bunions on his feet and that prolonged standing caused him pain, but the store manager insisted that claimant stand from now on. Claimant became upset and began raising his voice, so the store manager told claimant that they should take their conversation to his office.

When claimant arrived at his supervisor's office, he shut the door and the two continued discussing claimant's stool and other modifications the store manager had made to claimant's

workstation. After a while, claimant became agitated and started raising his voice. During the argument, both parties yelled and used profanity, though neither swore directly nor made any threatening or derogatory remarks to the other person. After a few minutes, the store manager stated something to the effect of, "If you want to sit while you work, go work at Aldi." The store manager then stood up, walked out of his office, and left the store to calm down.

Claimant interpreted the store manager's statement and actions to mean that his employment had been terminated, so claimant left the store and drove home. That evening, the employer disconnected claimant's work email and the application used to lock/unlock the store.

The next morning claimant texted the store manager and asked, "Am I officially fired or should I come into work today so we can discuss." The store manager responded, "Mark you quit," to which claimant responded, "No, you told me to leave. Do we need to discuss this with [the owner]?" The store manager then stated, "That's not true at all Mark and you know it. You are no longer employed here." Prior to claimant's separation, he had never been warned or disciplined for his attitude or conduct at work. Claimant had no knowledge his job was in jeopardy.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code §96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5(1) and 96.5(2)a. The burden of proof rests with the employer to show that the claimant voluntarily left the employment. *Irving v. Empl. App. Bd.*, 15-0104, 2016 WL 3125854, (Iowa June 3, 2016). A voluntary quitting of employment requires that an employee exercise a voluntary choice between remaining employed or terminating the employment relationship. *Wills v. Empl. Appeal Bd.*, 447 N.W.2d 137, 138 (Iowa 1989); *Peck v. Empl. Appeal Bd.*, 492 N.W.2d 438, 440 (Iowa Ct. App. 1992). It requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention. *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980). Where there is no expressed intention or act to sever the relationship, the case must be analyzed as a discharge from employment. *Peck v. Empl. Appeal Bd.*, 492 N.W.2d 438 (Iowa Ct. App. 1992).

Here, the employer has not presented sufficient evidence that claimant intended to sever his employment with North Central Iowa Service LLC or acted in any way to end his employment. While claimant left his shift early on May 29, 2023, he did so because he believed the employer's statement, "you can go work at Aldi," meant that his employment had been terminated. The next morning claimant asked the store manager whether he should come into work and the store manager informed claimant that he was, "No longer employed here." As claimant did not intend to resign and attempted to continue working by asking whether he should report to work, the administrative law judge views this separation as a discharge from employment and it will be analyzed as such.

Iowa Code section 96.5(2)(a) and (d) provide:

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.

...

d. For the purposes of this subsection, "*misconduct*" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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 even 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...

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).

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).

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

(4) Report required. The claimant's statement and the 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.

Every employer is entitled to expect civility and decency from its employees, and an employee's "use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct." *Henecke v. Iowa Dep't of Job Serv.*, 533 N.W.2d 573, 576 (Iowa App. 1995) (internal citation omitted). However, the use of profanity or offensive language is not automatically disqualifying for unemployment insurance benefits purposes. The "question of whether the use of improper language in the workplace is misconduct is nearly always a fact question... [and] must be considered with other relevant factors..." *Myers v. Employment Appeal Board*, 462 N.W.2d 734, 738 (Iowa App. 1990). An Employment Appeal

Board decision set forth six aggravating factors to be considered when examining an employee's use of improper language: "(1) cursing in front of customers, vendors, or other third parties; (2) undermining a supervisor's authority; (3) threats of violence; (4) threats of future misbehavior or insubordination; (5) repeated incidents of vulgarity; and (6) discriminatory context." Emp. App. Bd. Hrg. No. 16B-UI-08787, at *3 (Emp. App. Bd. pub. Oct. 21, 2016) (citing cases). The Employment Appeal Board also suggests that the general work environment is a relevant consideration in analyzing profanity. *Id.*

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 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 claimant's version of events to be generally more credible than the employer's version of those events. While claimant's conduct was perhaps "balky and argumentative," claimant did not refuse to follow any instructions nor direct any profanity or disparaging remarks at his supervisor in a threatening or confrontational manner.

The final incident leading to claimant's termination of employment involved claimant and his supervisor getting into an argument. Both parties used profanity, though neither directed their profanity at the other. Both parties were frustrated and upset. While claimant could be considered disrespectful in that he argued with his supervisor, the record does not show claimant yelled or swore in front of customers, he did not undermine his supervisor's authority, and he did not threaten any violence or insubordination. As this was a single instance of negative communication, and as claimant had not been previously warned about this conduct, the administrative law judge concludes claimant's conduct does not evince such willful or wanton disregard of the employer's interest as is found in deliberate violations or disregard of standards of behavior that an employer has the right to expect of employees. The employer has not met its burden of proving disqualifying, job-related misconduct. As such, benefits are allowed.

DECISION:

The June 23, 2023 (reference 01) unemployment insurance decision is reversed. Claimant did not quit but was discharged from employment for no disqualifying reason. Benefits are allowed, provided claimant is otherwise eligible.



Patrick B. Thomas
Administrative Law Judge

July 26, 2023
Decision Dated and Mailed

pbt/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.