

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MELVIN WOODS
Claimant

AMAZON.COM SERVICES INC
Employer

APPEAL 22A-UI-02396-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/05/21
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:

On December 30, 2021, the claimant filed an appeal from the December 23, 2021, (reference 01) unemployment insurance decision that denied benefits based on a determination that claimant was discharged due to disqualifying misconduct. The parties were properly notified about the hearing. A telephone hearing was held on February 18, 2022. Claimant, Melvin Woods, participated and testified. Employer participated through Hearing Representative, Frankie Patterson, and witness Manal Abu, Human Resources Assistant. Employer's Exhibit 1 was admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUE:

Was the claimant discharged from employment for disqualifying job related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on December 11, 2020. Claimant last worked as a full-time warehouse associate. Claimant was separated from employment on November 15, 2021, when he was placed on paid leave pending an investigation into an alleged harassment claim made by another associate. The employer conducted an investigation and determined that the claimant had referred to an associate's pair of shorts as "bougie bottoms" or "bougie booty" and had violated the company's distance policy when he cracked the same associates back and pressed the associates back side into his groin area. Additionally the employer's investigated an allegation that the claimant had been discussing his part-time business as a massage therapist with other associates. This allegation was not substantiated during the employer's investigation but was discussed during the hearing. After the investigation was complete the employer discharged the claimant for violating the employer's harassment policy as of December 15, 2021.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes claimant was discharged from employment for disqualifying 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 Iowa Administrative Code 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). 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).

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 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.*

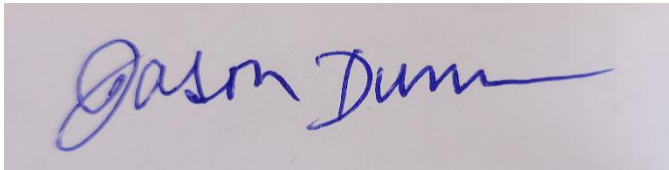
After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the employer's testimony more credible than the claimant's.

The claimant stated that he joked with his co-worker about his "bougie bottoms" but never said "bougie booty" and was not intending to harass the co-worker. Regardless when statements referring to any co-workers clothing or body part are made it places the person who is the recipient of those statements in a difficult and often-times uncomfortable position. The co-worker may not have wanted to appear rude or angry to the claimant but the repeated comments directed at him clearly made him uncomfortable enough to report the issue to the employer. The employer has a specific and thoughtful policy regarding what is and is not acceptable in the employer's working environment and the claimant acknowledged receiving that policy and understanding it. (Employer's Exhibit 1). Further the employer responded immediately to the allegations against the claimant and placed him on paid leave while the investigation took place. The claimant was upset that he was only contacted once from the employer to make a statement but the fact that the employer did not follow-up on its intention a second time is of no real consequence to the issues in this appeal.

The claimant's testimony that he never mentioned his side job as a massage therapist while not dispositive imputes strained his credibility. It is not clear how the employer or any associate would have knowledge of the fact that the claimant had attended massage therapy school and did have some experience with massage unless the claimant himself offered that information. The claimant's vehement denial on this issue to the fact-finder was suspect and imputed strain on his testimony in other areas. The employer met its burden in proving job disqualifying misconduct. Benefits are denied.

DECISION:

The December 23, 2021, (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 he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Jason Dunn
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March 10, 2022
Decision Dated and Mailed

jd/mh