

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHELLE L SCHUSTER
Claimant

LISLE CORPORATION
Employer

APPEAL 18A-UI-11842-AW
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/11/18
Claimant: Appellant (1)

Iowa Code § 96.5(2) – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32 – Discharge for Misconduct

STATEMENT OF THE CASE:

Michelle Schuster, Claimant, filed an appeal from the November 29, 2018 (reference 01) unemployment insurance decision that denied benefits because she was discharged from work with Lisle Corporation due to conduct not in the best interest of the employer. The parties were properly notified of the hearing. A hearing was held in Creston, Iowa on January 25, 2019 at 10:00 a.m. Claimant participated. Employer participated through Tracy Roush, Human Resources Manager. Claimant's Exhibits A and B were admitted. Employer's Exhibits 1 – 15 were admitted.

ISSUE:

Whether claimant's separation was a discharge due to 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 general production worker from June 15, 2015 until her employment with Lisle Corporation ended on November 9, 2018. (Claimant Testimony) Claimant's direct supervisor was Mike Woodard, production supervisor. (Roush Testimony) Claimant's schedule was Monday through Friday from 7:00 a.m. until 3:30 p.m. (Claimant Testimony)

On November 5, 2018, claimant notified employer prior to her shift starting that she would not be at work that day due to a "continuous migraine." (Roush Testimony) On November 5, 2018, employer saw claimant at the Page County Courthouse from approximately 9:00 a.m. until 9:30 a.m. (Roush Testimony) Claimant was present at the courthouse to testify as a witness in a criminal trial. (Claimant Testimony) Claimant was at the courthouse for approximately 45 minutes to an hour. (Claimant Testimony) Claimant alleges that she could not go to work on November 5, 2018 because the medication she was taking for migraines made her dizzy and lethargic. (Claimant Testimony) Claimant also alleged that on November 5, 2018 her migraine presented with dotted vision and light sensitivity. (Claimant Testimony)

On November 9, 2018, employer terminated claimant's employment due to claimant's dishonesty related to her absence from work on November 5, 2018. (Roush Testimony)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

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 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.

Iowa Admin. Code r. 871-24.32(1)(a) provides:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); *accord Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

It is the duty of the administrative law judge, as the trier of fact, 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 evidence you believe; 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 employer's version of events to be more credible than the claimant's version of those events. Specifically, claimant's testimony that the symptoms of her migraine and side effects of her medication prevented her from working – but did not prevent her from presenting at court to testify in a criminal trial – lacks credibility.

A company policy against dishonesty is not necessary; honesty is a reasonable, commonly accepted duty owed to the employer. The claimant knew or should have known that being dishonest with her employer regarding the reason for her absence from work was contrary to the best interests of the employer. Therefore, based on the evidence presented, the claimant was discharged for disqualifying, job-related misconduct, even without a prior warning. Benefits are denied.

DECISION:

The November 29, 2018 (reference 01) unemployment insurance decision is affirmed. Benefits are denied until such time as the claimant works in and has been paid wages for insured work equal to ten times claimant's weekly benefit amount.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/rvs