

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

TARA M PICKERING
Claimant

GOODWILL INDUSTRIES OF NE IA INC
Employer

APPEAL 24A-UI-03986-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/24/24
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge
Iowa Admin. Code r. 871-24.32(1)a – Discharge

STATEMENT OF THE CASE:

The claimant, Tara M. Pickering, filed an appeal from the April 12, 2024, (reference 01) unemployment insurance decision that denied benefits effective March 27, 2024, based upon the conclusion she was discharged due to violating a known rule. The parties were properly notified of the hearing. A telephone hearing was held on May 7, 2024, at 10:00 a.m. The claimant participated and testified. The employer participated through Officer of Donated Goods in Retail Michelle Peters. Exhibits A, B, C, D, E, and F were received as 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:

The claimant worked as a full-time store manager from May 4, 2023, until she was separated from employment on May 27, 2024, when she was terminated. The employer sells items that are donated by the public back to the public.

The employer has an employee handbook. Within the employee handbook is the employer's standards of conduct. The standards of conduct forbid employees from treating other staff with a disrespectful attitude. The claimant also signed a confidentiality policy when she was hired. The confidentiality policy said that breaches of confidentiality could lead to discipline up to and including termination.

In early March 2024, a subordinate, Sofia Gerst, filed an internal complaint against the claimant. She had just broken up with another employee.

On March 14, 2024, the employer's human resources department concluded an internal investigation based on Ms. Gerst's internal complaint filed against the claimant. The human

resources department found Ms. Gerst's complaint unsubstantiated. It found Ms. Gerst and a team lead, Ms. Hodges, had been disrespectful to the claimant.

On March 21, 2024, the claimant informed the employer's human resources department that Ms. Gerst was taking paid time off for the rest of the week. The claimant entered this information into the employer's scheduling system but did not make any announcement to the team. Nevertheless, staff had been speculating about her breakup and human resources visiting on March 14, 2024.

On March 22, 2024, Ms. Hodges falsely reported to Ms. Peters that the claimant had informed the team that Ms. Gerst was going to be out of the office the rest of the week.

On March 25, 2024, the claimant was planning to be off on Easter Sunday, March 31, 2024. The claimant sent text messages to Ms. Hodges and her other team lead, Tandi Dewater, about plans to run the store in her absence. The claimant suspected Ms. Hodges would call in sick on March 31, 2024. The claimant asked Ms. Hodges by text message to tell them if she was going to call in sick ahead of time. (Exhibit A) Ms. Hodges asked the claimant where this suspicion came from.

Later in the day on March 25, 2024, the claimant received news that Ms. Hodges had shut down the processing of donations in one part of the store from another employee. She also heard that Ms. Hodges said she and her husband joking that they would like to "chuck frozen apples at her head." With these two recent reports raising her suspicions, the claimant relieved Ms. Hodges of her team lead position by requesting her keys and phone to be left in the break room. The claimant unintentionally did this on the team lead text message thread because it had been used earlier that day. She provided these text messages which are summarized below. (Exhibit A)

The claimant wrote, "It appears that I [am] unable to leave you alone in charge while I am gone. You are unable to maintain any professionalism and won't refrain from gossiping, talking crap about people, and [sic] being a leader." The claimant told Ms. Hodges that she could finish the week if she was able to pull herself together to be a "responsible team lead." Ms. Hodges quipped, "Wow real professional... You know [sic] just to let you know I wasn't the only one 'gossiping.'" The claimant clarified that Ms. Hodges was one of her team leads, and so she expected more from her. She explained she was "so tired of [her] drama and gossiping constantly." The claimant then reiterated that Ms. Hodges should leave her key and phone. Ms. Hodges asked what the address of the employer's main office was. In response, the claimant wrote, "Google it." Ms. Hodges then thanked the claimant for the information. Later that night, the claimant told Ms. Hodges that if she wanted to talk to human resources they could go together. The claimant also said she would do it herself. Ms. Hodges replied, "Oh don't you worry." The claimant replied, "I am not worried. Have a good night." The claimant then realized this was still being exchanged in front of Ms. DeWater on the team lead text message thread and ended the conversation.

That night on March 25, 2024, the claimant wrote a summary email to the employer's human resources department outlining the issues with Ms. Hodges. The claimant provided this summary. (Exhibit C) In response, the employer's human resources officer replied that the claimant should have addressed these issues with Ms. Hodges privately, but she could likely terminate her the following day. (Exhibit C)

On March 26, 2024, Ms. Hodges filed a grievance with Ms. Peters naming the claimant for the messages exchanged on March 25, 2024. Ms. Peters arranged for a meeting with the claimant.

In the meeting, Ms. Peters requested the text messages the claimant sent to Ms. Hodges and the other team lead, Ms. DeWaters. The claimant refused because she did not believe the employer had the right to look at her text messages and she believed Ms. Hodges had already provided them.

On March 27, 2024, Ms. Peters terminated the claimant for the following reasons that taken together she believed caused dissension among staff and undermined her confidence in her as a store manager:

(1) The claimant violated the confidentiality policy by informing the office of Sofia Gerst's absence as reported by Ms. Hodges on March 22, 2024.

(2) The claimant's manner of speaking to Ms. Hodges on March 25, 2024, was a violation of the employer's code of conduct.

(3) The claimant's refusal to provide Ms. Peters text messages exchanged with Ms. Hodges on the team lead chat thread.

Despite Ms. Peters' concern, the claimant had the respect and support of her subordinates other than Ms. Gerst and Ms. Hodges.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the employer has not met its burden to show the claimant was discharged on March 27, 2024, for disqualifying misconduct. Benefits are granted, provided she is otherwise eligible.

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 claimant's version of events to be more credible than the employer's recollection of those events.

I find the claimant's description of events more credible because she provided needed context for the circumstances leading up to her termination. They tie in with powerful exhibits that further support her allegation. In particular, the claimant provided the text messages to the Appeals Bureau and the opposing party, that confirm many unvarnished truths about the conversation she had with Ms. Hodges. Ms. Peters, on the other hand, did not testify about specifics, but gave conclusions, such as what policy was violated.

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.

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.

Iowa Code section 96.5(2)b, c and d provide:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

b. Provided further, if gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

c. Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

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 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. Misconduct by an individual includes but is not limited to all of the following:

- (1) Material falsification of the individual’s employment application.
- (2) Knowing violation of a reasonable and uniformly enforced rule of an employer.
- (3) Intentional damage of an employer’s property.
- (4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer, or a combination of such substances, on the employer’s premises in violation of the employer’s employment policies.
- (5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer’s premises in violation of the employer’s employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.
- (6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.
- (7) Incarceration for an act for which one could reasonably expect to be incarcerated that result in missing work.
- (8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.
- (9) Excessive unexcused tardiness or absenteeism.
- (10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.
- (11) Failure to maintain any licenses, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual’s regular job duties, unless the failure is not within the control of the individual.
- (12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.

(13) Theft of an employer or coworker's funds or property.

(14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

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 final straw that caused the claimant's termination was her refusal to provide text messages to Ms. Peters on March 26, 2024. The following analysis is to determine if the claimant's refusal is insubordination.

An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). "Willful misconduct can be established where an employee manifests an intent to disobey the reasonable instructions of his employer." *Myers v. IDJS*, 373 N.W.2d 507, 510 (Iowa 1983) (quoting *Pierce v. IDJS*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988)). This requires an evaluation of the reasonableness of the employer's request and the claimant's reason for non-compliance objectively. To evaluate the claimant's reason for non-compliance from his subjective viewpoint would result in benefits being paid to someone whose "behavior is in fact grounded upon some sincere, but irrational belief and where the behavior may be properly deemed misconduct." *Aalbers v. IDJS*, 431 N.W.2d 330, 337 (Iowa 1988).

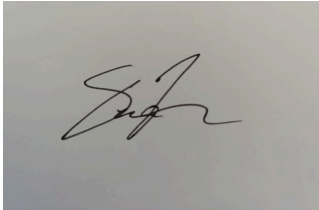
I find the claimant's non-compliance on March 26, 2024, to be objectively reasonable. I do not agree with her characterizations of Iowa law regarding whether an employer can request text messages from an employee.

Nevertheless, Ms. Peters already had the text messages from Ms. Hodges and possibly Ms. DeWater. The claimant gave a summary of the conversation to the human resources department earlier that week. The only objective purpose for having the claimant's version of the text thread would be for the claimant to provide that missing context that could exonerate herself. The claimant reasonably rejected the request, given this futility.

I further find that the claimant's speech on the text thread itself is not disqualifying. It is acknowledged that the claimant was terse in front of another team lead. But as the human resources officer acknowledged, Ms. Hodges was leaving soon, and the claimant had legitimate concerns about her performance and attitude. In this context, I find the claimant's actions on March 25, 2024, cannot have the willfulness against the employer's interest to be disqualifying either. The employer has not met its burden of proof to show the claimant was discharged on March 27, 2024, due to misconduct.

DECISION:

The April 12, 2024, (reference 01) unemployment insurance decision is REVERSED. The claimant was discharged on March 27, 2024, due to non-disqualifying circumstances. Benefits are granted, provided the claimant is otherwise eligible.

A rectangular box containing a handwritten signature in black ink. The signature is cursive and appears to read 'Sean M. Nelson'.

Sean M. Nelson
Administrative Law Judge II

May 10, 2024
Decision Dated and Mailed

smn/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:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: 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.