

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**CYNTHIA I PETERSON**  
Claimant

**HANDICAPPED DEVELOPMENT CENTER**  
Employer

**APPEAL 17A-UI-09375-JCT**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/20/17**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 5, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on October 17, 2017 after two postponements. The claimant participated personally. John Graupmann, legal assistant with Legal Aid, represented the claimant. The employer participated through Linda Gill, vice president of ICF/ID Services.

Claimant Exhibits 1 through 9 and Employer Exhibits A through C were received into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**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 was employed part-time as a receptionist and was separated from employment on August 18, 2017, when she was discharged for “repeated false accusations against co-workers, (and) dishonesty” (Employer Exhibit B).

The employer discharged the claimant, concluding she had created dissension in the workplace amongst her co-workers, based on comments she reported directly to her manager, Julie Woods, and Linda Gill, vice president of ICF/ID Services. The claimant had no warnings before she was discharged related to honesty, harassment or unprofessional conduct. The employer stated the claimant was trained on hostile work environments and professional conduct but no specific policy was produced for the hearing. The employer had a policy which states if an employee is having issues concerning co-workers or work conditions, the proper channels to address them were through management and Ms. Gill. The undisputed evidence is the

comments made by the claimant about her hours and her co-worker Carol, which led to her discharge, were made only to members of management and not directly to any co-workers

The claimant on at least three occasions had conversations with Ms. Gill and Ms. Woods because she didn't think it was fair that her co-workers would offer to pick up her shifts when she could not work them, but would not then share their shift in return with the claimant. There was no policy which required an employee to help another employee by working their shift, but then required them to swap their shift. The employer attempted to repeatedly explain to the claimant this concept, with limited success. The claimant was not issued any warning from the employer that continued complaints on the hours issue could result in discipline or discharge.

In addition, the claimant lodged a concern of bullying to Ms. Gill and Ms. Woods, which the employer determined to be unfounded. The claimant was upset in early August upon learning that her co-worker, Carol, had blocked the claimant's proposal for a new schedule, which would permit the claimant to have every other Saturday off work (Claimant Exhibit 1). The claimant informed the employer on August 11, 2017, that she did not want to work with Carol, and asked to begin her shift at 1:30 p.m. instead of 1:00 p.m. to avoid interaction. The employer granted the request for one day and upon the second request, the employer determined the desk covered by Carol and the claimant would be unstaffed and denied the request. In a conversation with the employer, the claimant alleged Carol would not leave her shift and remain seated at the desk for a period of time, requiring the claimant to wait and stand. When the employer investigated the claimant's concerns, it found Carol would clock out within a few minutes of her end time, and the claimant's allegation that Carol would not give up her seat was unsubstantiated. Upon completion of the investigation, and upon review, the claimant was discharged.

#### **REASONINGS AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa Code section 96.5(2)a provides:

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:

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:

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 Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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

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

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.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

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. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

The credible evidence presented is the claimant was discharged for reportedly causing dissension amongst her workplace by way of accusing them of stealing her hours and calling one a “bully.” However, none of these comments were made to the claimant’s co-workers; only to management, as part of the established chain of command/reporting protocol. Therefore, the only co-workers affected by the claimant’s reporting or comments were management. The administrative law judge is persuaded part of management duties include resolving conflict and addressing concerns raised by employees. It is understandable that the employer may have been frustrated with the claimant’s repeated complaints about issues that had been explained previously, but no evidence was presented that the claimant’s conduct violated any policy. In fact, it followed employer policy in terms of who to report concerns to, if she had them. If the employer did not want the claimant to continue to bring her concerns (valid or not) to them, as she previously had, she should have been warned so she could anticipate disciplinary action for future conduct. The evidence presented though does not establish the claimant was dishonest or caused dissension as alleged, only that she was a repetitive complainer, which is not supported by deliberate, willful or intentional conduct.

Based on the evidence presented, the administrative law judge concludes the conduct for which the claimant was discharged was at most poor judgment and inasmuch as the employer had not previously warned the claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. Training or general notice to staff about a policy is not considered a disciplinary warning. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. The employer has not met its burden of proof to establish a current or final act of misconduct, and, without such, the history of other incidents need not be examined.

The question before the administrative law judge in this case is not whether the employer has the right to discharge this employee, but whether the claimant’s discharge is disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate the claimant may have been a sound decision from a management viewpoint, for the above stated reasons, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant’s discharge was due to job related misconduct. Accordingly, benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The September 5, 2017, (reference 01) decision is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The benefits claimed and withheld shall be paid, provided she is otherwise eligible.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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