

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARK W MOERMAN

Claimant

APPEAL 19A-UI-06052-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SABRE COMMUNICATIONS CORP

Employer

OC: 06/30/19

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

On July 31, 2019, Mark W. Moerman (claimant) filed an appeal from the July 22, 2019, reference 01, unemployment insurance decision that denied benefits based upon the determination Sabre Communications Corp (employer) discharged him for unsatisfactory work. The parties were properly notified about the hearing. A telephone hearing was held on August 22, 2019. The claimant participated personally. The employer participated through Human Resources Business Partner Joli Gehring and IT Operations Manager Mark Payne. The Claimant's Exhibit A and the Employer's Exhibits 1 and 2 were admitted into the record. The claimant offered a written statement for the hearing; however, it was not admitted as it is not evidence because it was a statement written for the hearing and the claimant was available to testify making the offered statement duplicative to other, better 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 was employed full-time as a System Administrator beginning on September 11, 2018, and was separated from employment on June 27, 2019, when he was discharged. The claimant's job performance was initially satisfactory. There was a situation that arose in December 2018 which the claimant handled very well. However, at some point, the employer began to experience issues with the claimant's job performance and attitude.

On June 7, 2019, the claimant received his performance evaluation. IT Operations Manager Mark Payne gave the claimant an overall rating of "Meets Some Expectations." (Exhibit A) Payne's overall issues with the claimant's job performance was the lack of speed when it was a project the claimant did not want to work on and his refusal to follow directives.

On June 10, the claimant was placed on a 45-day Performance Improvement Plan (PIP). (Exhibit 2) First, the employer told him a specific project needed to be completed by June 21 and authorized expenses including travel to complete the project. Next, the employer gave him

direction as to which projects he was to focus his time. Finally, the employer told him that he was expected to follow directives from his supervisor in a reasonable amount of time. A follow-up meeting was scheduled for ten days later to check on the claimant's progress.

On June 20, the follow-up meeting was held. The claimant was not in a position to complete the project by June 21 as he had been directed. He also had spent time working on creating a list of things he felt the employer should focus on, a project which was outside the scope of the work on which the employer had directed him to focus. Additionally, during the meeting, the claimant continued to challenge directives given by management. The employer ended the meeting and the decision was made to meet again on June 27.

The employer spent the week reviewing the claimant's PIP and his conduct during the June 20 meeting. It decided the claimant had not made sufficient progress toward improving his performance. On June 27, the claimant was discharged due to his work performance.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits are denied.

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). 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). Failure to sign a written reprimand acknowledging receipt constitutes job misconduct as a matter of law. *Green v Iowa Dep't of Job Serv.*, 299 N.W.2d 651 (Iowa 1980). Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

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 the disputed factual issues were resolved. After assessing the credibility of the witnesses who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge attributes more weight to the employer's version of events.

The employer has met the burden of proof to establish that the claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. The employer directed the claimant to complete projects and follow instructions as given. The claimant continued to challenge the employer's instructions and failed to follow the directives he was given. The claimant's repeated failure to perform his job duties as directed is evidence of negligence or carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. Accordingly, benefits are denied.

DECISION:

The July 22, 2019, 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn