

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MIRANDA K WHITE
Claimant

TENCO INDUSTRIES INC
Employer

APPEAL 16A-UI-07974-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/26/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 18, 2016, (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for conduct not in the best interest of her former employer. The parties were properly notified of the hearing. A telephone hearing was held on August 8, 2016. The claimant, Miranda K. White, participated. The employer, Tenco Industries, Inc., participated through Kerri Erue, area director; and Angie Lennie, . Employer's Exhibits 1 through 4 were received and admitted into the record without objection.

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: Claimant was employed part time as a direct support professional, or DSP, from August 6, 2015, until this employment ended on June 22, 2016, when she was discharged for insubordination.

Claimant was scheduled to work on June 18, 2016, from 3:00 p.m. until 8:00 p.m. Around June 5, 2016, claimant had requested to use PTO for June 18, wanting to volunteer for the employer's annual golf tournament. Erue told claimant that she needed to find coverage for her shift if she wanted to use this PTO time and volunteer. Claimant did not find anyone to work her shift that day.

The morning of June 18, around 10:00 a.m., claimant sent a text message to her supervisor wanting to know if the supervisor would come to work for her. (Exhibit 3) Claimant's supervisor replied that she could not, as she was at the golf tournament. Claimant stated she had requested PTO both for the golf tournament and to attend a wedding. Claimant's supervisor replied that claimant's request had indicated she had only wanted to attend the golf tournament. Claimant swore at supervisor multiple times and informed the supervisor she would not be coming to work, even after she was told that she did not have approved PTO for that day and

she would be subject to disciplinary action for missing work. Claimant's next scheduled shift was on June 22, 2016. During that shift, claimant was discharged.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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.

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).

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). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature, and 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). "The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations . . ." *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734 (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.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer more credible than the claimant. Claimant gave inconsistent testimony and her testimony contradicted the statements she made to her supervisor via text message on June 18, 2016. For these reasons, the administrative law judge did not find claimant credible and does not believe claimant was told she did not have to work on June 18.

Here, claimant admits that she was told she needed to come to work on June 18, 2016. She refused to go in for her scheduled shift, even after her supervisor told her that she did not have PTO for that day and needed to report to work. When her supervisor conveyed this information, claimant responded by swearing at her and disrespecting her. Claimant's use of profanity coupled with her refusal to report for a scheduled shift amounts to disqualifying misconduct, even without prior warning for identical conduct. Benefits are withheld.

DECISION:

The July 18, 2016, (reference 02) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Elizabeth Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/