

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SARAH G CHAPLINE
Claimant

HOPE HAVEN INC
Employer

APPEAL NO. 20A-UI-11752-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/31/20
Claimant: Appellant (2)

Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.5-2-a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Federal Law PL 116-136 Sec. 2104 – Eligibility for Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated September 10, 2020, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 17, 2020. Claimant participated personally and with attorney Chip Baltimore. Employer participated by Connie Pagel and Erin Reise.

ISSUES:

Whether claimant was discharged for misconduct?

Whether claimant is able and available for work?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on May 29, 2020.

Employer discharged claimant on June 1, 2020 because claimant did not timely return phone calls from her supervisor after warning and did not take a requested Covid test after there had been an infection in the office where she worked.

Claimant worked as a full time service coordinator for employer. When Covid arrived in Iowa, claimant and others were asked to spend a greater percentage of their time in the office as they were not interacting with clients as often in person. On April 21, 2020 claimant received a performance concern notice from employer addressing claimant's lack of coming to work in a timely manner and lack of timely responses to questions from her supervisor. Claimant was directed that she was expected to respond within an hour to inquiries from others, and a failure

to do so could result in a termination. Claimant had no further tardiness concerns after this warning.

On May 27, 2020 employer received information of a Covid-affected person that had been through the office where claimant worked. On May 28, employer requested that all people who were working out of the affected office take a Covid test. Employer cited EEOC regulations allowing testing of workers.

Claimant was told on May 28 that she needed to get a Covid test as all other workers in the office were also required to do so as a business necessity. Claimant came to work on May 29 and did not go to the third party to get tested. Claimant had multiple messages left for her by her supervisor on May 29, but did not return the messages within an hour. Later in the day on May 29 employer requested that claimant leave the office.

Claimant believed employer did not have the right to test her as employer cannot dictate medical procedures for employees. Claimant additionally stated that employer was requested by claimant to do all communications through documentable means and not leave phone messages or communicate verbally with claimant. Employer did not follow claimant's request.

Employer tried to call claimant at home to arrange a meeting on June 1, 2020 to discuss claimant's ongoing employment. Claimant did not answer the phone or return calls. Employer then sent a letter to claimant informing her that she was being terminated as of May 29, 2020. Employer stated that claimant was being terminated for insubordination for not returning calls after notice. Employer cited multiple calls made to claimant on May 29 that claimant did not return. Employer's human resources officer gave testimony that the decision was reached early on May 29, 2020 to terminate claimant for the insubordinate non return of calls. Employer acknowledged that the calls that were not returned were not made until later in the day after the decision to terminate had occurred.

Claimant's supervisor indicated that although the human resources officer indicated the decision to terminate was made before calls were made on May 29, 2020 that were not returned by claimant, claimant's supervisor indicated that the decision was not made until after claimant did not return the calls.

At all times claimant was able and available to work.

REASONING AND CONCLUSIONS OF LAW:

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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991). Claimant in this matter repeatedly refused to cooperate with legitimate concerns from employer. Employer has a legitimate right to ensure a healthy workplace, and employer further has a legitimate right to request a medical excuse to require an employee to work from home. Evidence shows this was applied throughout employer's business. Claimant refused to get a doctor's note allowing her to work from home. As such, employer was then within their rights to find a business necessity for asking claimant to test for Covid and to be suspended from work when claimant refused to get a test at a third party facility.

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 Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider

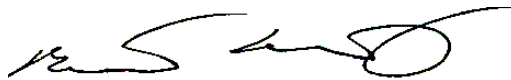
the evidence using his or her own observations, common sense and experience. *State v. Holtz*, Id. In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether 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. *State v. Holtz*, Id. The struggle in this matter is that employer's two witnesses gave contradictory testimony as to the timeline when claimant was to be terminated. If claimant was decided to be terminated because she did not want a Covid test, that is a different matter than if claimant is terminated for not returning calls after warning. The contradictory testimony causes the administrative law judge to believe the termination was based more on the refusal to test and on a general frustration with claimant.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation. In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning insubordination. In no way is the administrative law judge condoning either the lack of returning calls or the lack of testing, and those actions could result in a termination based on misconduct, but in this instance claimant was not shown to be derelict in returning calls and that dereliction of her duties led to her termination.

The last incident, which brought about the discharge, fails to constitute misconduct because employer did not prove the act of timely testing was an act of misconduct. Certainly, employer can suspend claimant for the choice to not test when requested, but a termination was in no way indicated through company documents based on a refusal to test. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated September 10, 2020, reference 02, is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.



Blair A. Bennett
Administrative Law Judge

November 24, 2020
Decision Dated and Mailed

bab/scn