

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANITA M GOLDEN
Claimant

ASCHENBRENNER TRUCKING INC
Employer

APPEAL 21A-UI-20246-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/25/21
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Anita M Golden, the claimant/appellant, filed an appeal from the September 3, 2021, (reference 01) unemployment insurance decision that denied benefits based on a July 23, 2021 discharge from work. The parties were properly notified of the hearing. A telephone hearing was held on November 19, 2021. Ms. Golden participated and testified. Jeffery Smith, attorney, represented Ms. Golden. The employer participated through Michelle Aschenbrenner, office manager and dispatch team,

ISSUE:

Was Ms. Golden discharged for disqualifying, job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Golden began working for the employer on October 7, 2014. She worked as an assistant to the office manager. Ms. Golden worked full-time hours until the employer reduced her hours in January 2021 due to lack of work. The employer continued to pay the same salary and provide her with the same benefits. Ms. Golden's employment ended on July 23, 2021.

In late June/early July 2021, the employer learned that Ms. Golden had increased the hotload price being charged to a customer without the employer's permission. The employer had negotiated a set hotload price with the customer. The employer has previously provided Ms. Golden with a written price sheet that showed the set hotload price and told Ms. Golden that she was to only use the set hotload price on the price sheet. When the employer asked Ms. Golden about why she changed the priced without the employer's permission, Ms. Golden said that the broker, the middleperson between the employer and the customer, told her to do so. Ms. Golden also said that her decision made the company more money.

When the customer learned about the price increase, the customer called the employer into a meeting. The employer was able to save their deal with the customer but only after assuring the customer that an unauthorized price increase would not happen again.

Ms. Golden self-quarantined from July 12 through July 21 due to the COVID-19 pandemic. Ms. Golden returned to work on July 22. On July 23, Ms. Aschenbrenner told Ms. Golden that her employment was terminated. Ms. Aschenbrenner began to tell Ms. Golden the reasons for the employer's decision. Ms. Golden told Ms. Aschenbrenner that she did not want to hear the employer's reasons and left. Ms. Aschenbrenner testified that the employer ended Ms. Golden's employment because she was not meeting the employer's performance expectations – making mistakes and not cross-checking her work – and because Ms. Golden had changed the price being charged to a customer without the employer's permission.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Golden was discharged from employment due to job-related misconduct.

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.

871 IAC 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 Department of Job Service*, 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). 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 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.*

The findings of fact show how the administrative law has resolved the disputed factual issues in this case. The administrative law judge assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and used his own common sense and experience.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented credible evidence that Ms. Golden increased the hotload price without permission from the employer after having been warned to only use the prices on the price sheet. Ms. Golden's actions were not on a minor issue, but were at the heart of the employer's relationship with its customer. Ms. Golden's action was misconduct. Benefits are denied.

DECISION:

The September 3, 2021, (reference 01) unemployment insurance decision is affirmed. Ms. Golden 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.



Daniel Zeno
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December 29, 2021
Decision Dated and Mailed

dz/mh