

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALISON K LENTZ

Claimant

APPEAL 17A-UI-09323-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXCEPTIONAL PERSONS INC

Employer

OC: 08/20/17

Claimant: Appellant (1)

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 based upon a determination that claimant was discharged from employment due to insubordination. The parties were properly notified of the hearing. A telephone hearing was held on September 28, 2017. The claimant, Alison K. Lentz, participated. The employer, Exceptional Persons, Inc., participated through Lisa Paterno, HR Director; Lisa Levendusky; Accounting Director; Deb Schultz, Accounts Receivable Manager; and Deb Jungling, Chief Financial Officer.

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 full time, most recently as a billing specialist, from March 15, 2016, until August 21, 2017, when she was discharged for refusing to follow instructions. One of claimant's job responsibilities was to enter authorizations into the employer's tracking spreadsheet. This spreadsheet was used by the employer's Community Services division. Claimant was expected to make an entry into the tracking software each month if an authorization was not received. Without claimant doing this task, the tracking system would not recognize that an individual was still getting services. The employer described this as a "critical" task.

In May 2017, someone in Community Services reported that claimant had not been timely making the necessary entries into the employer's spreadsheet. This person reported that claimant had missed ten out of the last twelve months of entries, and someone had to remind her to complete the task. On May 11, the employer issued claimant a disciplinary action for this issue. The disciplinary action stated that failure to improve would lead to further discipline, up to and including discharge. The final incident involved claimant again failing to make the entries. This was reported to the employer on August 11, 2017. The employer looked into the issue and discharged claimant on August 21.

Claimant had helped write the manual and process documents for this task, and she knew she was expected to complete the task on a monthly basis. Despite this, claimant erroneously believed that she was supposed to wait for confirmation that the authorization was extended before making the entry. The employer explained that the system was designed to flag any entries that had not yet received authorization, and it was not necessary for claimant to deal with that.

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). 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; 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.*

Claimant was expected to make the necessary spreadsheet entries each month without awaiting authorization, and her own testimony indicates she repeatedly failed to do this task properly. Claimant sought to turn the focus onto specific irrelevant details during the hearing, and she denies being warned or known this was an issue. The employer provided three witnesses who provided consistent testimony explaining why claimant would have been aware that her failure to properly complete this data entry was a significant issue. 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's witnesses more credible than claimant.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. Claimant's repeated failure to accurately perform her job duties after having been warned is evidence of negligence or carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. See Iowa Admin. Code r. 871-24.32(1)a. The employer has established that claimant was discharged for disqualifying, job-related misconduct. Benefits are withheld.

DECISION:

The September 5, 2017 (reference 01) unemployment insurance decision is affirmed. 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 A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn