

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LORI L MEGGISON
Claimant

HY-VEE INC
Employer

APPEAL 16A-UI-05497-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/17/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the May 5, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for insubordination in connection with her work. The parties were properly notified of the hearing. A telephone hearing was held on May 27, 2016. The claimant, Lori L. Meggison, participated. The employer, Hy-Vee, Inc., participated through Craig Todd, store director; Andrew Bracht, staff pharmacist; Nathan Weston, pharmacy manager; and Ajah Anderson, hearing representative with Corporate Cost Control. Employer's Exhibit A was 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 full time as a pharmacy technician from October 2013, until this employment ended on April 18, 2016, when she was discharged for insubordination.

On April 14, 2016, claimant was scheduled to work until 6:30 p.m. The pharmacy was slow that evening, and claimant asked Bracht if she could leave around 6:10 p.m. Bracht told her she could not leave, as everyone needed to stay until the pharmacy closed at 6:30 p.m. Between 6:20 p.m. and 6:25 p.m., claimant announced that she was leaving. Bracht reminded her that she needed to stay until the pharmacy closed. Claimant responded, "Fire me, slap me on the wrist, I don't care," and then she left. Both Weston and Bracht testified that claimant made this comment before she left. Claimant testified that while Bracht told her not to punch out early, she believed he was joking. While claimant had left early in the past, she always had permission to do so.

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; 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 outcome of this case rests significantly on the credibility of the parties. 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's witnesses provided more credible testimony than claimant. Both Bracht and Weston (who was not on the line to hear Bracht's testimony) recalled the specific comment claimant made when she left work on April 14: "Fire me, slap me on the wrist, I don't care." This comment shows claimant knew she was leaving work without authorization, and it undermines the believability of claimant's alleged belief that she thought Bracht was joking when he told her she could not leave. The administrative law judge finds claimant left work prior to her scheduled departure time after being told she did not have permission to do this.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that claimant left work prior to her scheduled departure time, after being instructed not to leave early. This is disqualifying misconduct, and benefits must be withheld.

DECISION:

The May 5, 2016, (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 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/pjs