

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEFFREY S HOLDORF
Claimant

APPEAL 21A-UI-07623-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROC TAPROOM INC
Employer

**OC: 03/15/20
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview
PL 116-136, Sec. 2104 – Federal Pandemic Unemployment Compensation

STATEMENT OF THE CASE:

ROC Taproom, the employer/appellant, filed an appeal from the March 9, 2021, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on May 25, 2021. The employer participated through Juliet Diaz, human resources manager. Mr. Holdorf participated and testified. Official notice was taken of the administrative record.

ISSUE:

Was Mr. Holdorf discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Holdorf began working for the employer, a restaurant, on June 28, 2017. He worked as the office manager and part-time cocktail server. The employer terminated Mr. Holdorf's employment on December 27, 2020.

In March 2020, the United States declared a public health emergency because of the COVID-19 pandemic. The employer closed on March 18 due to the governor's proclamation and laid off Mr. Holdorf that day. Mr. Holdorf returned to work on May 15 and the restaurant reopened on May 17. The employer eliminated the office manager position in September 2020.

The employer's policy provides that unauthorized disclosure of confidential information such as menu changes, prices changes, and information about an employee's own employment can lead to discipline up to and including termination.

At some point, a regular customer contacted the employer and told them that Mr. Holdorf told him about prices changes and menu changes. A manager-in-training resigned and told the

employer that Mr. Holdorf had told the manager about his dissatisfaction with the office manager position being eliminated. The employer spoke with other employees who told the employer that Mr. Holdorf was telling regular customers about upcoming price changes and menu changes, information about the elimination of the office manager position, his disagreement with those changes and his disagreement with how the general manager and other managers were running certain shifts. Mr. Holdorf had no prior disciplinary record. The employer terminated Mr. Holdorf's employment for disclosing confidential information.

Mr. Holdorf admitted that he was disappointed with the elimination of the office manager position but he understood the rationale for eliminating the position due to the pandemic. Mr. Holdorf admitted to discussing menu and price changes with regular customers as he had done for years. Mr. Holdorf denied disclosing any confidential information to regular customers, including upcoming prices changes or menu changes or any other confidential information.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Mr. Holdorf was discharged from employment for no disqualifying reason.

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). 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).

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 using his own common sense and experience.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

In this case, the employer has failed to establish misconduct on the part of Mr. Holdorf. Mr. Holdorf's conversations with regular customers about changes to the menu and prices were a usual part of him building and maintaining rapport with the regular customers and not misconduct. Since the employer has failed to establish disqualifying job-related misconduct, benefits are allowed.

DECISION:

The March 9, 2021, (reference 01) unemployment insurance decision is affirmed. Mr. Holdorf was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Daniel Zeno
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

June 11, 2021
Decision Dated and Mailed

dz/scn