

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHERYL LANSDOWN
Claimant

PELLA CORPORATION
Employer

APPEAL 18A-UI-09413-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/12/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 31, 2018 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for violation of a known company rule. The parties were properly notified of the hearing. A telephonic hearing was held on September 26, 2018. The claimant, Cheryl Lansdown, participated. The employer, Pella Corporation, participated through Julie Wolf, HR Manager; Regan Barnett, Department Manager; and Ryan VanDalen, Production Manager. Claimant's Exhibit A and Employer's Exhibits 1 through 5 were 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, most recently as a general specialist, from December 8, 2014, until August 10, 2018, when she was discharged. The employer maintains a Respectful Work Environment policy. (Exhibit 3, page 1) Violations of this policy include using profane, abusive, or threatening language directed toward another person. (Exhibit 3, page 4) Claimant came to work on Monday, August 6, and spoke with her manager, Regan Barnett, about missing the prior Saturday. Barnett asked claimant if this was an FMLA-covered absence, and claimant said it was not. Barnett then told claimant that she would likely be receiving a disciplinary action for missing that Saturday. Claimant left the office and went to the production floor to work.

Approximately 45 minutes later, claimant came up to the office looking for Ryan VanDalen, Barnett's supervisor. VanDalen was not available. Claimant said she wanted to talk to him because Barnett had told her previously that her attendance on Saturday was not required. Barnett denied this and asked claimant if she still had the voicemail regarding attendance on Saturday. Claimant went and retrieved her cell phone, but she had already deleted the voicemail message. Claimant then became angry and began calling Barnett a "fucking liar." Barnett sat down at her desk, and claimant stood over her and pointed in her face, repeating

that she was a “fucking liar.” Claimant told Barnett that she hated her and did not want her to be the manager any longer. (Exhibit 1) Another manager overheard this and came into the office and asked claimant to calm down. Claimant replied that she could not calm down and continued accusing Barnett of lying and using profanity. The altercation ended when claimant left to speak to the nurse. Claimant was suspended on August 8 and discharged two days later for violating the Respectful Work Environment policy.

Claimant was warned on November 11, 2016, for violating the Respectful Work Environment policy. In that case, claimant was accused of saying she was going to hit someone and “beat their head in.” She also requested the names of the people who reported concerns to the employer. (Exhibit 2) Claimant was told at that time that a second violation of this type within twenty-four months would result in immediate discharge from employment.

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).

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 testimony more credible than claimant’s testimony.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. In this case, claimant repeatedly used profanity toward her supervisor and behaved aggressively toward her. Claimant had been counseled about appropriate work behavior in the past, and she knew or should have known her job was in jeopardy for continued inappropriate behavior. While claimant was understandably upset about her sister, her conduct toward her supervisor was wholly unacceptable. The employer has established that claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

DECISION:

The August 31, 2018 (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