

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

NICKIE T BRYANT
Claimant

APPEAL NO: 19A-UI-03684-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRESTAGE FOODS OF IOWA LLC
Employer

OC: 01/27/19
Claimant: Respondent (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

The employer filed an appeal from the April 30, 2019, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 23, 2019. The claimant participated personally. The employer participated through Pamela Webster, director of human resources. Crystal Hill, director of logistics, testified.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

NOTE TO EMPLOYER:

If you wish to change the address of record, please access your account at: <https://www.myiowaui.org/UITIPTaxWeb/>.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Has the claimant been overpaid any unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?
Can any charges to the employer's account be waived?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a load planner beginning February 11, 2019 and was separated from employment on April 12, 2019, when she was discharged. The employer stated the reasons for discharge as poor performance, refusal to work and insubordination.

The claimant was employed for approximately two months. When the claimant was hired, she was given a copy of the employer's handbook which included rules against insubordination, poor performance and being subject to discipline if refusing to perform work. The employer indicated the claimant could not master basic data entry, and therefore never was given her entire scope job duties to complete before discharge. The claimant indicated she had been repeatedly told to figure things out when requesting help from her immediate supervisor, Ms. Hill, who did not work on site with the claimant every day. Prior to discharge, the employer provided the claimant a warning on April 5, 2019 regarding her unsatisfactory work performance.

On April 10, 2019, the claimant was asked by Ms. Hill to provide an update of the location of a truck. The claimant responded in an email that she would obtain the location from the driver, and that the last update she had was approximately seven hours before. She then proceeded to call the driver and update the client. Ms. Hill contacted the claimant angrily and declared that she would finally take care of things, implying Ms. Bryant would be fired.

On April 11, 2019, the employer asserted the claimant refused to do her work, stating she wasn't doing anything and had a feeling she would be fired. The claimant stated she stayed late to complete her job duties, including the shag report. The claimant denied making the comments to co-workers, Elizabeth Kelly and Larry Moseley. Neither co-worker attended the hearing. She was subsequently discharged on April 12, 2019.

The claimant has a weekly benefit amount of \$467.00 but has not received benefits since her separation with this employer. The employer did not participate in the scheduled fact-finding interview. The employer uses its corporate address in North Carolina as its address of record, and relies upon the office to open, review, and scan mail related to Iowa Workforce Development. No one from the corporate office testified about receipt of the fact-finding notice in North Carolina. Ms. Webster did not receive the forwarded notice until after the interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

Iowa Administrative Code rule 871-24.32(1)a provides:

"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).

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.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The employer alleged the final incident occurred on April 11, 2019 when the claimant refused to perform work and reportedly told two co-workers she would not work. The claimant denied the allegation and stated she stayed late to complete work that day. The employer failed to present either co-worker as a witness and did not request a postponement to allow for their participation. The administrative law judge concludes the claimant's testimony to be more credible than the employer's hearsay evidence. Accordingly, the administrative law judge concludes the claimant did not refuse to perform her job duties on April 11, 2019. Even if the claimant did refuse to work, the credible evidence supports Ms. Hill planned to fire the claimant based upon her handling of the email on April 10, 2019 as evidence by her comments which insinuated she was going to discharge the claimant.

Based on the evidence presented, the administrative law judge concludes that the claimant was discharged for her unsatisfactory work performance, including the mishandling of an email on April 10, 2019. Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986).

Since the employer agreed that the claimant had never had a sustained period of time during which she performed her job duties to employer's satisfaction and inasmuch as she did attempt to perform the job to the best of her ability but was unable to meet its expectations, no intentional misconduct has been established, as is the employer's burden of proof. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Accordingly, no disqualification pursuant to Iowa Code § 96.5(2)a is imposed. Benefits are allowed, provided she is otherwise eligible.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law.

Because the claimant is eligible for benefits, the issues of overpayment and relief of charges are moot. (At this time, the claimant had not received any benefits.)

DECISION:

The April 30, 2019, (reference 02) decision is affirmed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn