

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LAURA C BLACK
Claimant

CLAIM DOC LLC
Employer

APPEAL 24A-UI-03772-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/24/24
Claimant: Appellant (2)**

Iowa Code § 96.5(2)a – Discharge
Iowa Admin. Code r. 871-24.32(1)a – Discharge

STATEMENT OF THE CASE:

The claimant, Laura C. Black, filed an appeal from the April 8, 2024, (reference 01) unemployment insurance decision that denied benefits effective March 26, 2024, based upon the conclusion she was discharged for violating a known rule. The parties were properly notified of the hearing. A telephone hearing was held on April 30, 2024, at 1:00. The claimant participated and testified. The employer participated through Senior Vice President and Chief Legal Officer Amy Pellegrin. Exhibits 1, 2, 3, and 4 were admitted into evidence.

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:

The claimant worked as a full-time member advocate from November 11, 2022, until she separated from employment on March 26, 2024, when she was terminated. The workplace is the size of a football field, but desks are arranged very close together, so it is unlikely that someone could repeatedly make statements without multiple people overhearing them.

The claimant electronically signed receipt of the employee manual on February 19, 2024. The employer provided the claimant's acknowledgment. (Exhibit 4) The employer's employee handbook contains an anti-harassment policy. The harassment policy provides the following examples:

Ethnic slurs, racist jokes, pornographic emails, unwelcome touching, displaying offensive pictures, or any other verbal or physical conduct that has the purpose or effect of creating an intimidating, hostile, or offensive work environment.

On December 23, 2023, the claimant complained about another employee making sexual advances. Senior Vice President and Chief Legal Officer Amy Pellegrin counseled this other

employee and the claimant after conducting interviews. Ms. Pellegrin made that determination because this other employee made a series of conclusions without specific allegations that essentially the claimant welcomed his advances. For instance, the notes from the investigation state the claimant was “flirty.” Scarcely any detail is provided other than saying she giggled and engaged in banter. This employee said the claimant talked and joked about her body. No specific dates or specific descriptions of these statements were collected as part of this investigation.

On March 25, 2024, a female employee filed a complaint against the claimant with Ms. Pellegrin. She claimed that she heard second-hand from several people that the claimant had been alleging she and another employee had been in a sexual relationship. The male employee that was accused of dating the first told Ms. Pellegrin that same day that the claimant asked him, “Are you and [the female employee] fucking? How long have you been fucking?” He added that the claimant made statements referencing her body approximately 10 to 15 times in the preceding month. Neither of these employees provided when the claimant reportedly made these statements and Ms. Pellegrin did not think it mattered to ask. No details were given in terms of where these statements were made.

On March 26, 2024, Ms. Pellegrin talked to another employee who claimed to have witnessed these other sexual statements. This employee clarified the 10 to 15 sexual statements made in the preceding month consisted of the claimant stating, “Stop looking at my ass. Stop looking at my assets,” and “Are you looking at my ass,” when she passed employees. Again, Ms. Pellegrin did not attempt to determine if this witness could give specifics about when these statements occurred, and who if anyone could have overheard them other than those who complained.

Later that day, Ms. Pellegrin terminated the claimant because she found the complaints brought against her credible due entirely to the fact that the witnesses the complainants identified all vaguely accused her of making these statements on unspecified dates and without any details about where these statements were made. Ms. Pellegrin was so confident that she did not even interview the claimant regarding the statements. Ms. Pellegrin felt like the claimant showed a propensity when the person she accused of sexual harassment similarly vaguely accused her of welcoming his behavior in December 2023. Ms. Pellegrin reasoned the claimant violated the employer’s sexual harassment policy.

The claimant credibly denies engaging in this behavior.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the employer cannot meet its burden to show the claimant was terminated on March 26, 2024, due to misconduct. Furthermore, the employer’s application of the policy is not reasonable as it must be under Iowa Code section 96.5(2)(d)(2). Benefits are granted, provided the claimant is otherwise eligible.

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.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the claimant's version of events to be more credible than the employer's recollection of those events.

I find the report as prepared and as further described by Ms. Pellegrin as lacking any credibility for the following reasons:

First, Ms. Pellegrin did not even think to ask when any of these statements were allegedly made. This observation alone fundamentally undermines any determination of credibility that can be made. It is acknowledged that the employees who provided information may not have been able to provide specifics for one or several of these statements, but Ms. Pellegrin conceded she did not even ask them.

Second, Ms. Pellegrin did not even interview the claimant regarding the substance of the complaint. Notably, many of the statements alleged to be a violation of the sexual harassment policy could have been evidence that she did not welcome people looking at her in a sexual way. It is acknowledged the claimant denied ever making these statements. All the same, interviewing the claimant could have provided the investigation with much needed context regarding these statements and would have allowed her to deny these allegations.

Third, Ms. Pellegrin said she found the allegations credible because the claimant had previously been found as welcoming sexual banter in the office because of her sexual harassment complaint in December 2023. Again, little detail is provided to dismiss her internal complaint as based on the male employee's belief that the behavior was welcomed. Indeed, nearly all the notes are threadbare conclusions like the claimant was "flirty." Without additional detail, I have no idea what "flirty," "giggling banter," and the like mean in terms of welcoming sexual advances. It informs the reader that she engaged in "body talk," but again, there is not any context for what body part she is referencing and in response to what statement if any.

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.

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.

Iowa Code section 96.5(2)b, c and d provide:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

b. Provided further, if gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

c. Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

d. For the purposes of this subsection, "*misconduct*" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

(1) Material falsification of the individual's employment application.

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

(3) Intentional damage of an employer's property.

(4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer, or a combination of such substances, on the employer's premises in violation of the employer's employment policies.

(5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer's premises in violation of the employer's employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.

(6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.

(7) Incarceration for an act for which one could reasonably expect to be incarcerated that result in missing work.

(8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.

(9) Excessive unexcused tardiness or absenteeism.

(10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.

(11) Failure to maintain any licenses, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual's regular job duties, unless the failure is not within the control of the individual.

(12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.

(13) Theft of an employer or coworker's funds or property.

(14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes

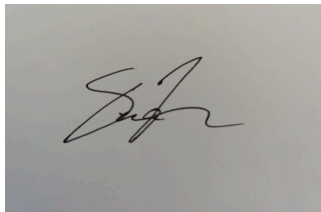
misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). Misconduct must be “substantial” to warrant a denial of job insurance benefits. *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp’t Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

The claimant credibly denies all the allegations in the report. Furthermore, the employer’s decision to discipline the claimant on December 23, 2023, in response to her own sexual harassment complaint is not reasonable. As a result, the employer has not met its burden to show the claimant was discharged on March 26, 2024 for violating “a reasonable and uniformly enforced rule of an employer.”

Benefits are granted, provided she is otherwise eligible for benefits.

DECISION:

The April 8, 2024, (reference 01) unemployment insurance decision is REVERSED. The employer cannot meet its burden to show the claimant was terminated on March 26, 2024, due to misconduct. Furthermore, the employer’s application of the policy is not reasonable as it must be under Iowa Code section 96.5(2)(d)(2). Benefits are granted, provided the claimant is otherwise eligible.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is centered on a light gray rectangular background.

Sean M. Nelson
Administrative Law Judge II

May 3, 2024
Decision Dated and Mailed

smn/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.