

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANGELA STRONG

Claimant

APPEAL 21A-UI-09362-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BELFORD HOSPITALITY, LLC

Employer

OC: 12/13/20

Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Belford Hospitality, LLC, the employer/appellant, filed an appeal from the March 26, 2021, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 17, 2021. The employer participated through Christine Baumann, gm. Ms. Strong participated and testified.

ISSUE:

Was Ms. Strong discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Strong began working for the employer on March 2, 2020. She worked as a full-time front desk clerk. The employer terminated her employment on October 28, 2020 for fraternizing with the guests.

The employer's policy provides that employees are prohibited from fraternizing with guests and employees are prohibited from being on the hotel property when they are not working unless employees have the employer's approval. Employees who violate the policy are subject to immediate termination of their employment.

Sometime in October, an employee told the employer that they saw Ms. Strong on the hotel property with hotel guests when she was not working. The employer took no action on this allegation. In early October, the employer had a meeting with all front desk employees to remind them of the policy.

Ms. Strong was friends with one of the guests who lived at the hotel. On several occasions, the guest offered and Ms. Strong accepted rides to and from work since Ms. Strong did not have a working car. On, or about, October 25, the guest with whom Ms. Strong was friends complained

to the employer that Ms. Strong was asking the guest for rides and for money. On October 28, the employer terminated Ms. Strong's employment for violating its policy. Ms. Strong testified that she did not ask any guests for rides or money and she was not on the employer's property when she was not working.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Strong 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 that Ms. Strong engaged in job-related disqualifying misconduct. The employer based its decision to terminate Ms. Strong's employment on an allegation from another employee and a complaint from a guest without any proof of an investigation or any other evidence to verify what the employee alleged and/or what the guest complained about was true. Ms. Strong credibly testified that she did not ask any guests for rides or money and she was not on the property when she was not working. Benefits are allowed.

Since Ms. Strong is eligible for benefits, the issues of repayment and chargeability are moot.

DECISION:

The March 26, 2021, (reference 02) unemployment insurance decision is affirmed. Ms. Strong was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



Daniel Zeno
Administrative Law Judge
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June 30, 2021
Decision Dated and Mailed

dz/scn