

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMEL CLARK
Claimant

AMGAD F ZAGHLOUL
Employer

APPEAL 17A-UI-00234-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/27/16
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Jamel Clark (claimant) filed an appeal from the December 29, 2016 (reference 03) unemployment insurance decision that denied benefits based upon the determination Amgad F. Zaghloul (employer) discharged him for conduct not in its best interest. The parties were properly notified about the hearing. A telephone hearing began on January 30, 2017 and concluded on February 8, 2017. The claimant participated. The employer participated personally. Director of Operations Karl Weglarz participated on the employer's behalf. Employer's Exhibits 1 and 2 were received.

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 was employed full-time as a Back of House Team Member beginning on December 21, 2015, and was separated from employment on November 18, 2016, when he was discharged. The employer owns and operates a Chick-Fil-A in Iowa. The claimant was responsible for preparing food in the area to which he was assigned.

The employer uses a computerized system for communication in the restaurant as to what food has been ordered, which orders have been fulfilled, and when the order is given to the guest. After the claimant would finish prepping food, he would bump the order off his screen. Any order that for any reason was running more than three minutes behind would turn red. Director of Operations Karl Weglarz had spoken to the claimant once about orders going red or taking too long to complete.

On November 16, 2016, the drive thru was getting backed up on orders and Weglarz determined it was because they were waiting on food, specifically food from the claimant's area. Weglarz asked the back of house staff why they were backed up and no one had a response. Weglarz then noticed that while the other screens were showing red orders, the claimant's screen only had three green orders. After the rush, Weglarz asked the claimant about the

situation and if he had bumped the screen before the orders were completed. The claimant denied that stating he never bumped his screen. Weglarz explained again how the computer screens worked and asked the claimant if he had bumped his screen. The claimant again denied he had ever bumped the screen. Weglarz contacted the employer who reviewed the security footage for the time frame in question. The employer determined the claimant had bumped his screen.

On November 18, 2016, the employer and Weglarz met with the claimant to discuss his continued employment. The employer again asked the claimant during the discussion if he had bumped the screen. The claimant again denied bumping the screen. The employer discharged the claimant at that time due to his dishonesty. The employer would not have discharged the claimant due to performance issues; however, if he did not acknowledge a performance issue, then the employer could not address the issue with him.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct. Benefits based upon wages credited from this employer's account are denied.

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 regulations define misconduct, stating:

“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 Admin. Code r. 871-24.32(1)a. 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).

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). 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). 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).

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 version of events to be more credible.

The employer has presented substantial and credible evidence that the claimant was dishonest when he denied bumping the screen. The claimant's conduct is a deliberate disregard of the standards of behavior which the employer has the right to expect of its employees. This is disqualifying misconduct without prior warning. Accordingly, benefits based on wages from this employer's account are denied.

DECISION:

The December 29, 2016 (reference 03) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits based on wages credited from this employer's account are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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