

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANN B FROST
Claimant

BHFO INC
Employer

APPEAL 17A-UI-05977-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/14/17
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the June 1, 2017 (reference 01) unemployment insurance decision that disallowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on June 27, 2017. The claimant, Ann B. Frost, participated personally. The employer, BHFO, Inc., participated through witness Laura Jaeger.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a Human Resources Generalist. Claimant was employed from May 17, 2016 until May 15, 2017 when she was discharged from employment. Claimant's job duties included creating and verifying new employee paperwork, training for new hires, phone screening and supervising safety drills. Laura Jaeger was claimant's immediate supervisor.

This employer has a written disciplinary policy in place that states a violation of its integrity and professionalism policies could lead to corrective action, up to and including discharge. Claimant signed an acknowledgement of the policies and had daily access to the policies as part of her job duties as a human resources generalist. A violation of the integrity policy includes being untruthful to a supervisor.

The final incident leading to discharge occurred the week of May 8, 2017 when claimant processed her daughter's I-9 paperwork as a new employee. The I-9 form is used for verifying the identity and employment authorization of individuals who are hired to work in the United States of America. As part of the verification process, claimant was required to obtain two types of documentation from a person who was hired to work for this employer as identified in the I-9 list of acceptable documentation provided on the instructions to the I-9 form. The claimant was

also required to match the social security number from each document provided to the social security number provided by the employee on the I-9 form.

Claimant's daughter presented a receipt for a new social security card as one of the forms of documentation. The receipt did not have a social security number listed on it. Claimant input into the computerized E-verify system that she had received a social security card receipt. However, she then changed her answer on the E-verify system to allege that she verified an actual social security card, when she had not. The E-verify system found the error and populated an email to both claimant and Ms. Jaeger stating that there was a missing document.

On Thursday, May 11, 2017, Ms. Jaeger spoke to claimant about the email. Claimant indicated to Ms. Jaeger that there was nothing wrong, that she had keyed in the wrong information but had gone back and fixed it. Ms. Jaeger specifically asked claimant whether there was any missing documentation and claimant responded that there was not. This was untrue since there was no copy of an actual social security card obtained. After this meeting, Ms. Jaeger was in claimant's office and found the file noting that a receipt for a new social security card had been accepted instead of an actual social security card. Ms. Jaeger met with claimant the following Monday, May 15, 2017 and discharged her for failure to properly verify documentation for the I-9 and for untruthfulness to her during their previous conversation. During the discharge meeting claimant admitted that she understood the employer could be subject to fines from the Department of Labor for inaccurate I-9 reporting processes.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for job-related misconduct. Benefits are denied.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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).

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 that Ms. Jaeger's testimony is more credible than claimant's testimony.

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 serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the

employee. *Id.* 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). Further, 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 law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). A lapse of 11 days from final act until discharge when claimant was notified on fourth day that his conduct was grounds for dismissal did not make final act a “past act”. *Greene v. Emp’t Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

This was not an incident of carelessness or poor work performance. Claimant intentionally reported on the E-verify system that she received a copy of the new employee’s social security card when she had not. Claimant was then dishonest with Ms. Jaeger when she was questioned as to whether documents were missing from the new employee, who was claimant’s daughter. It is clear that claimant’s actions were intentional and they were a substantial violation of the client’s policies and procedures.

The employer has a right to expect that an employee will not jeopardize the liability of the employer by intentionally violating policies that are in place. There is substantial evidence in the record to support the conclusion that claimant deliberately violated these rightful expectations in this case. Accordingly, the employer has met its burden of proof in establishing that the claimant’s conduct consisted of deliberate acts that constituted an intentional and substantial disregard of the employer’s interests. These actions rise to the level of willful misconduct. As such, benefits are denied.

DECISION:

The June 1, 2017 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Benefits are withheld in regards to this employer until such time as claimant is deemed eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs