

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**AHMED SAMY AHMED ZAKY ABDELNABY**  
Claimant

**APPEAL 21A-UI-21207-AR-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KRAFT HEINZ FOODS COMPANY LLC**  
Employer

**OC: 01/17/21  
Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant, Ahmed Samy Ahmed Zaky Abdelnaby, filed an appeal from the September 14, 2021, (reference 03) unemployment insurance decision that denied benefits based upon the determination that the employer, Kraft Heinz Foods Company, LLC, discharged claimant for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on December 7, 2021. The claimant participated personally. The employer participated through Rodney Warhank. CTS Language Link provided Arabic language translation services for claimant.

**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: Claimant was employed full time as a production worker from August 24, 2020, until this employment ended on July 2, 2021, when he was discharged.

On June 29, 2021, claimant was observed running product overweight. When his paperwork was reviewed, it was discovered that he was recording that the product was the appropriate weight. When confronted about the issue, claimant said that Crumley told him to record the weights incorrectly to avoid production disruptions. When asked about this, Crumley denied telling claimant to falsify the recorded weights. Claimant testified that he did not say that Crumley told him to falsify records, but instead that Crumley gave him instructions in order to keep the machines running with efficiency. Claimant believed a language barrier may have contributed to a misunderstanding. The employer informed claimant that he was being suspended pending discharge due to falsification of documents on July 2, 2021, and escorted him from the building. He was later informed of the discharge decision. He grieved the discharge, and the grievance process concluded in the employer's favor in September 2021. Claimant was not returned to work.

On May 25, 2021, claimant received a final written warning after he it was discovered that claimant was entering faulty entries into the computer system in which the employer tracks quality checks. Claimant was warned that similar future conduct could result in additional discipline up to and including discharge. Claimant received this final written warning shortly after making a complaint to Crumley that a team lead had made objectionable comments about claimant's religion. Claimant later learned that Crumley was friends with the person who made the comments about claimant's religion.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant 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.

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).

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).

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.

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, 394–95 (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 her 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. Claimant credibly testified that at least the final incident that led to discharge may have been based on misunderstanding and language barrier. He denied having intentionally falsified documents. The employer did not produce a witness with firsthand knowledge of the claimant’s conduct to rebut claimant’s version of events.

While claimant was apparently on a final written warning for falsification of documents, he raised a credible argument that some of the conduct may have been the result of misunderstanding or language barrier. The employer has not carried its burden of establishing that the conduct constituted willful disregard for its interests despite prior warning for substantially similar conduct. No disqualification is imposed.

**DECISION:**

The September 14, 2021, (reference 03) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.



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Alexis D. Rowe  
Administrative Law Judge

January 7, 2022  
Decision Dated and Mailed

ar/mh