

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LORI A LUNSFORD
Claimant

MOSAIC
Employer

APPEAL 16A-UI-00605-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/06/15
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 12, 2016, (reference 03) unemployment insurance decision that denied benefits based upon discharge from employment for failure to perform satisfactory work. The parties were properly notified of the hearing. A telephone hearing was held on February 8, 2016. The claimant, Lori A. Lunsford, participated. The employer, Mosaic, participated through a hearing representative, Thomas Kuiper, and the following witnesses: Shanda Hiatt, HR Business Partner; Tami Arnold, Program Coordinator; and Hugh Carroll, Direct Support Associate.

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 direct support manager from April 13, 2015, until this employment ended on December 9, 2015, when she was discharged.

Claimant received a six-month review on or about October 15, 2015. (Exhibit 1) Claimant also received a written warning at this time. (Exhibit 2) Claimant's evaluation score fell below the "meets expectations" mark. Specifically, claimant was failing to complete her "Q" reviews on time, she was failing to meet with direct reports and new employees as often as instructed, she was failing to build positive relationships with her team, and she was not properly supervising her subordinates. Claimant was informed that she needed to improve in these areas and was notified that her job was in jeopardy if she failed to improve. Claimant admitted these issues existed but believes she was not given the proper tools or assistance to meet the employer's expectations. Claimant testified that Arnold was not able to help her with the "Q" reviews, and she stated her own direct-care-hours obligation prevented her from meeting her obligations regarding meeting with staff.

Claimant met with Hiatt on November 23. During this meeting, Hiatt expressed that the employer was not seeing the necessary improvement in claimant's performance. Claimant

expressed that she wanted to succeed and believed she could complete her outstanding tasks. Hiatt reiterated during this meeting that claimant's job was in jeopardy if she failed to improve her performance. Arnold testified the employer was seeing an increase in staff turnover, which was traced back to claimant. Additionally, the employer was having issues successfully billing for services, which was also traced back to claimant.

On December 7, claimant made an inappropriate comment to Carroll in front of multiple employees regarding Carroll being an alcoholic. Carroll immediately reported it to Arnold, as it made him feel embarrassed and offended. Claimant did not recall this incident, but she testified that had she made a comment about Carroll, it was not any different than the comments everyone else made about him.

The employer discharged claimant on December 9, due to her ongoing performance concerns regarding "Q" reviews, timely-delivered staff evaluations, and staff meetings, as well as the December 7 incident involving Carroll. The employer indicated claimant's comment about Carroll was the final incident triggering the termination.

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.

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).

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). 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). 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 more credible than claimant. The employer provided Carroll, the employee about whom claimant made an inappropriate comment, and Carroll gave believable testimony during the hearing. The administrative law judge believes claimant made an inappropriate comment to Carroll on December 7, and the administrative law judge does not believe other employees made these comments about Carroll.

Claimant admitted she experienced performance issues and prioritized some areas of her work over other areas. While she may have been correct in prioritizing her direct service obligations over meeting with her subordinates, she did not dispute that the employer expected her to meet both these obligations, rather than just perform the more important of the two. Claimant's repeated failure to completely perform her job duties in a timely manner after having been warned is evidence of negligence or carelessness to such a degree of recurrence as to rise to the level of disqualifying job-related misconduct. See Iowa Admin. Code r. 871-24.32(1)a. Benefits are withheld.

DECISION:

The January 12, 2016, (reference 03) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Elizabeth Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/css