

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KIMBERLY LYTLE
Claimant

THE MERRILL COMPANY
Employer

APPEAL 21A-UI-13976-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/21/21
Claimant: Appellant (1)

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 4, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the conclusion she was discharged for failing to perform satisfactory work, even though she was capable of doing satisfactory work. The parties were properly notified of the hearing. A telephone hearing was held on July 29, 2021. The claimant participated and testified. The employer participated through Human Resources Representative Tracy Boyd.

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 pricing specialist from April 13, 1996, until she was separated from employment on March 23, 2021, when she quit. The claimant's immediate supervisor was Vice President of Inventory and Product Bryan Miller.

In 2019, the employer switched computer systems for entering pricing information. The claimant received information to review to help her with getting comfortable on the new system. Mr. Miller and Pricing Manager Shelly Shoning

In August 2020, the employer noticed a marked downturn in the claimant's productivity. During that time, the claimant began working from home intermittently. The claimant acknowledged that she was distracted with taking her husband to doctor's appointments.

On October 15, 2020, Mr. Miller wrote a memo to the claimant stating that she had been found asleep in the office on multiple occasions, once which occurred on October 9, 2020. Mr. Miller offered the claimant an extended schedule to take a walk around the block to refresh herself.

The claimant later informed Mr. Miller she was falling asleep due to a problem with her medications.

On March 5, 2021, Pricing Manager Shelly Shoning and Mr. Miller issued the claimant a last chance agreement. It began by observing that the claimant's quantity of work and quality of work had deteriorated precipitously in the previous seven months. It broke these deficiencies into the following six categories: (1) workload is decreased, (2) decline in productivity, (3) frequent errors on assigned tasks, (4) missed deadlines, (5) lack of interest in team meetings, and (6) lack of communication. The final warning concluded that these deficiencies would have to be corrected in the next 30 days or she would be terminated. During the meeting, the claimant asked Mr. Miller and Ms. Shoning if there would be a monitoring system implemented, so she would know what the standard was. Mr. Miller and Ms. Shoning did not give her that reassurance.

During the hearing, Human Resources Representative Tracy Boyd testified the claimant was producing the equivalent amount of work in a 40 hour work week that the other pricing specialist could deliver in five to ten hours. She also said the claimant rarely interacted in team meetings.

On March 23, 2021, Ms. Shoning discovered that the claimant had erroneously entered tens of thousands of pricing errors into the Keystone line. Some were hundreds of dollars below the appropriate price. Mr. Miller terminated her later that day because she had failed to meet the requirements of the March 5, 2020 last chance agreement.

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 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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). 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). 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 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.*

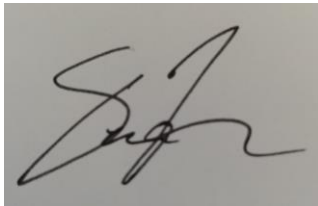
After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events as reflected in the findings of facts.

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986). Here, the employer has met its burden that the claimant could perform the job to its satisfaction, but chose

not to do so. The administrative law judge does not find it credible the claimant's allegation that she did not have support in her role. The claimant acknowledged that when she started working from home she did not give it the attention it deserved. The employer's testimony demonstrates that the claimant's performance fell off roughly seven months before she was terminated. That period of poor performance was punctuated with the large scale pricing error incident that caused her termination. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). Benefits are denied.

DECISION:

The June 4, 2021, (reference 01) 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.



Sean M. Nelson
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August 9, 2021
Decision Dated and Mailed

smn/lj