

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHAD A HENRICHS
Claimant

MIDWEST BASEMENT SYSTEMS INC
Employer

APPEAL 21A-UI-00437-S2-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/02/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 12, 2020, (reference 01) unemployment insurance decision that denied benefits based upon a finding that claimant was discharged for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on February 8, 2021. The claimant Chad A. Henrichs participated and testified. Witnesses Jonathan Ford and Paul Dawson testified on behalf of claimant. The employer Midwest Basement Systems, Inc. participated through human resources manager Elizabeth Odorisio and general manager Eric Love. Employer's Exhibits 1 and 2 were admitted.

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 service technician from May 1, 2017, until this employment ended on July 30, 2020, when he was terminated.

Employer maintains a Code of Conduct which prohibits unprofessional and disrespectful behavior and any unkindness or impatience with customers. This policy is found in the employee handbook and claimant was aware of the policy. (Employer's Exhibit 2)

On July 1, 2020, employer received a complaint from a customer regarding claimant's treatment of her. She was upset and stated claimant was rude, disrespectful, and short with her because she wanted answers to her questions before paying for the work. The customer complained to claimant's supervisor. When Love spoke to claimant about the incident, he explained he had a bad day and was working long hours. He told Love he has on occasion told customers that if they question the work he is performing he has told the customers he will rip out the work.

Employer spoke with claimant about his attitude and being disrespectful on three previous occasions. These conversations occurred during discussions to grow claimant into senior

management on March 15, May 25, and July 6, 2020. Love was concerned that claimant's negative attitude could hinder his progress in advancing his career. Claimant often complained and acted negatively during weekly meetings, which was harmful to the morale of other employees.

Claimant was out of work due to COVID-19 during the remainder of July 2020. When he returned to work on July 20, 2020, he was terminated for violating employer's Code of Conduct, specifically by being unprofessional and disrespectful to customers and during meetings.

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).

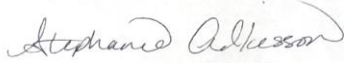
The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 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 her 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.

Employer is entitled to establish reasonable work rules and expect employees to abide by them. Employer has presented substantial and credible evidence that claimant continued to act in a negative and disrespectful manner to staff, management, and customers after having been warned. Despite these warnings, claimant continued to engage in similar behavior. This is disqualifying misconduct.

DECISION:

The November 12, 2020, (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 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 Adkisson
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February 22, 2021
Decision Dated and Mailed

sa/mh