

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRIANNA FOWLER
Claimant

PETCO ANIMAL SUPPLIES INC
Employer

APPEAL 20A-UI-00064-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: OC: 12/01/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant, Brianna Fowler, filed a claim for unemployment insurance benefits with an effective date of December 1, 2019. She then filed an appeal from the December 24, 2019, (reference 01) unemployment insurance decision that denied benefits based upon separation.

Prior to the hearing, the claimant, through counsel, submitted discovery requests. After an extension and prehearing conference, as well as the claimant filing a motion to compel/motion for sanctions, the employer elected not to participate in the hearing or respond to the discovery requests.

After proper notice, a telephone hearing was held on February 13, 2020. The claimant participated personally and through Emily McCarty, attorney at law. James Fowler, husband of claimant, also testified.

The administrative law judge took official notice of the administrative records. Claimant Exhibits A and B were admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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 merchandise operations leader and was separated from employment on December 6, 2019, when she was discharged by her store manager and district manager.

At the time of discharge, the employer told the claimant she was being discharged based upon alleged falsification of timecards for November 20 and 21, 2019. The claimant denied

submitting timecards which did not accurately reflect the time she worked for the days. The claimant had no prior warnings and had worked for the employer since 2016. She was unaware of any policy or rule she violated at the time of discharge.

As a store operations leader, the claimant had access to the employer's timekeeping system and could edit her timecards and other employees. She had never been informed she could not edit her own timecard and had served as an interim manager for a period of time until November 11, 2019 when new management began. Upon the beginning of new management, the claimant was specifically instructed to continue handling timekeeping and was never informed she could not edit her own time cards as needed.

On November 20, 2019, the claimant arrived to work at 4:15 p.m. in advance of her 5:00 listed start time. The claimant had requested and been approved to start early to make up time she missed earlier in the week. The claimant began working with her merchandisers upon arrival and did not immediately clock in upon entering the store from the rear door. She edited the timecard to reflect her start time and stated video surveillance in the store could have confirmed her arrival and working before 5:00 p.m.

On November 21, 2019, the claimant worked from approximately 6:30 a.m. until 7:40 p.m. She stayed later than expected due to ongoing issues related to the store delivery driver and was in touch with her store manager about them (Claimant Exhibit A). She denied editing or falsifying her time card for the shift. She was subsequently discharged.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

Iowa unemployment insurance law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.*

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.

The employer has the burden of proof in establishing disqualifying job related 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.*

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.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has not satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The claimant credibly testified she worked on November 20 and 21, 2019 and accurately recorded the time for which she worked, even though she did manually edit her start time on November 20, 2019. The claimant denied violating any rule or procedure as it related to timekeeping or falsification of documentation. The employer did not participate in the hearing or provide evidence of any rule or procedure that the claimant violated or any evidence of a timecard that may have been falsified. Therefore, based on the evidence presented, the administrative law judge concludes that the employer has not sustained its burden of proof in establishing that the claimant's discharge was due to job related misconduct. Accordingly, benefits are allowed provided the claimant is otherwise eligible.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

DECISION:

The unemployment insurance decision dated December 24, 2019, (reference 01) is reversed. The claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. The benefits claimed and withheld shall be paid, provided she is otherwise eligible.

Jennifer L. Beckman
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Decision Dated and Mailed

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