

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JENNIFER L PRINCE
Claimant

DES MOINES IND COMMUNITY SCH DIST
Employer

APPEAL 17A-UI-00120-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/27/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the December 30, 2016 (reference 02) unemployment insurance decision that disallowed benefits based upon claimant's discharge from employment. The parties were properly notified of the hearing. A telephone hearing was held on February 17, 2017. The claimant, Jennifer L. Prince, participated personally and was represented by Attorney Bruce Stoltz Jr. The employer, Des Moines Ind Community Sch Dist, participated through witnesses Rhonda Wagoner; Ellen Sarlet; and Amanda Miller. Employer's Exhibit 1 was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact finding documents.

ISSUES:

Was the claimant discharged for disqualifying job-related misconduct?
Did claimant voluntarily quit the employment with good cause attributable to employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time in the food and nutrition department. Claimant was employed from August 16, 2013 until December 5, 2016 when she was discharged from employment. Claimant's job duties included preparing food for breakfast and lunch; taking inventory; and supervising other employees.

On October 24, 2016 claimant turned in a note from her physician and a request for a leave of absence due to medical issues she was having. Her physician's note stated that she was to remain out of work temporarily and needed to be off work at that time. There was no date set as to when claimant could return back to work. During the week of October 24, 2016 Ms. Sarlet tried to telephone claimant on three separate occasions and she sent claimant an email regarding the fact that her documents for her request for a leave of absence were incomplete. The employer was requesting that the physician state an end date for her proposed medical leave. Claimant did not respond to these requests for information.

On November 15, 2016 the employer received an anonymous telephone call that claimant was working in the Saydel Community School District. Ms. Sarlet telephoned the Saydel Community School District and confirmed that claimant had worked at that district as an assistant to the cook for the days of November 2, 3, and 4, 2016. Ms. Sarlet reported this information to Ms. Miller. Ms. Miller reported this information to the employer's human resources department as part of the investigation.

On December 1, 2016 Ms. Miller telephoned claimant and advised that her previous request for a leave of absence had been denied because there was no end date provided and she asked her to attend a meeting to discuss her employment. Claimant met with Ms. Miller, Ms. Sarlet, and Sheila Mason on December 5, 2016. During this meeting claimant was asked whether or not she worked for the Saydel Community School District on November 2, 3, and 4, 2016. Claimant confirmed that she did work on those dates in the food and nutrition department as an assistant to the cook. Based on this information, Ms. Miller decided to discharge claimant from employment. Claimant was discharged effective that date. See Exhibit 1.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged for job-related misconduct. Benefits are denied.

As a preliminary matter, I find that the Claimant did not quit. Claimant was discharged from employment.

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).

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.

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

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 that Ms. Wagoner, Ms. Sarlet and Ms. Miller's testimony is more credible than claimant's testimony.

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 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.* 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). Further, 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 law limits

disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000). A lapse of 11 days from final act until discharge when claimant was notified on fourth day that his conduct was grounds for dismissal did not make final act a "past act". *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

The employer has a right to expect that an employee will not be dishonest with supervisors, including omission of relevant information. Misconduct includes deliberate acts or omissions by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Claimant was not reporting to work because her physician had recommended that she remain out of work temporarily and she needed to be off work at that time. Claimant completed a leave of absence form to be absent from work based upon her doctor's recommendation. Claimant then, without informing her employer, worked for three days doing similar work at a different school district.

There is substantial evidence in the record to support the conclusion that claimant deliberately failed to report her ability to work on November 2, 3, and 4, 2016 and intentionally concealed the fact that she was working for a different school district while reporting that she was too ill to work for this employer. These actions are a material breach of the duties and obligations arising out of claimant's contract of employment. Lastly, there claimant was interviewed regarding the allegations of misconduct and discharged the same day. The discharge was based upon a current act.

Accordingly, the employer has met its burden of proof in establishing that the claimant's conduct consisted of deliberate acts which constituted an intentional and substantial disregard of the employer's interests. These actions rise to the level of willful misconduct. As such, benefits are denied.

DECISION:

The December 30, 2016 (reference 02) unemployment insurance decision is affirmed. Claimant was discharged from employment for job-related misconduct. Benefits are withheld in regards to this employer until such time as claimant is deemed eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/