

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMY M WELLER
Claimant

HOPE HAVEN INC
Employer

APPEAL 18A-UI-02842-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/28/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant, Amy M. Weller, filed an appeal from the February 22, 2018, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 29, 2018. The claimant participated personally and was represented by Fred Perkins, attorney at law. The employer participated through Travis Sheridan, work service manager. Arlis Kraai, human resources, also testified. Employer Exhibits 1-6 and Claimant Exhibits A, B, C, D, E, F, and G 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 mental health specialist and day-habilitation services leader until she was discharged from employment on January 30, 2018. The claimant was discharged for theft of a co-worker's property and insubordination (Employer Exhibit 1, 2, 3).

The claimant and Jared Weller were married for approximately 14 years and both worked for this employer. Mr. Weller worked in maintenance. As the claimant and her husband were separating in October 2017, Mr. Weller was also dating the claimant's co-worker. While Mr. Weller worked in a separate department and had different management, he and the claimant could not completely avoid interaction in the workplace.

At the time of hire, the claimant had received training of the employer's policies and rules, which in part included professionalism at all times, and prohibited theft and insubordination (Employer Exhibit 3). In addition, on two separate occasions, Mr. Sheridan, in the presence of other employees, on December 18, 2017, and January 3, 2018, had stated to the claimant that she needed to stay out of Mr. Weller's office (Employer Exhibit 2, 3) due to the pending divorce (Employer Exhibit 5).

The claimant had on several occasions made reports to her manager, Travis Sheridan, stating she did not want to work with him, that she wanted him transferred, and reporting that his company vehicle was parked at his girlfriend's home. When the claimant would talk about Mr. Weller to Mr. Sheridan, he would escalate specific concerns to Mr. Weller's manager for handling, and also remind the claimant that he did not want the divorce to be brought into the work place, and he did not want to be in the middle of it. Mr. Sheridan stated he tried to be sensitive of the claimant's situation, citing to one case where Mr. Weller's girlfriend was excluded by Mr. Sheridan from a company event to prevent the claimant having to interact with her. The claimant did not bring forth any concerns related to safety/threats/violence to Mr. Sheridan or Human Resources while employed. No protective order or no-contact order was sought or granted while the claimant was employed.

Prior to the final incident, the claimant had made Mr. Sheridan aware that Mr. Weller had come to her home on two occasions, without her permission. Specifically, on January 12, 2018, Mr. Weller had reportedly entered the claimant's home and removed some clothing and a letter written by their daughter. The claimant called law enforcement (Claimant Exhibit E) but no arrest was made or charges were filed. The evidence is disputed as to the ownership of the items that were removed. Mr. Sheridan reminded the claimant in response to the incidents to coordinate with her attorney since they were divorce related.

The final incident occurred on January 25, 2018, when the claimant entered Mr. Weller's opened maintenance shop/office and removed several items, without his permission, including some shirts and a letter written by their daughter. Mr. Weller was not present but a co-worker observed the claimant and reported it to Mr. Weller, who notified Mr. Sheridan on January 26, 2018. Earlier in the day, the claimant stated she was in the maintenance shop for a paintbrush and saw the items. Later, she retrieved them and removed them from the employer's premises.

The claimant asserted that she did nothing wrong because she was simply retrieving her items, which Mr. Weller had previously removed from her home. The claimant also opined that if she broke policy by removing items from Mr. Weller's office, by way of "theft of employee property", then he also broke the policy when he entered her home and removed the items. When questioned, the claimant initially denied being in the maintenance shop/office, which was not true, since she had been there with the paintbrush. She then admitted to removing items from the maintenance shop/office. The claimant did not ask Mr. Sheridan or Human Resources to mediate or help her retrieve the items she believed she was entitled to having. The evidence is disputed as to whether the claimant put the removed items in her home or "burned them" (Employer Exhibit 6). Following a short investigation, the claimant was discharged.

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, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

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 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.

Working with family members or significant others can pose unique challenges in the workplace, where the lines of professional and personal relationships understandably can become blurred. Such is the case here, where both the claimant and her ex-husband/father of her children worked. To further complicate matters, the claimant's ex-husband was also having a relationship with one of the claimant's co-workers. The administrative law judge is sympathetic to the claimant and recognizes her preference not to work with him (or his girlfriend) under the circumstances. The administrative law judge does not condone Mr. Weller's conduct in any way. However, the credible evidence presented is that when the claimant had made the employer aware of actual concerns involving Mr. Weller, they had been escalated to his management, when appropriate, and that at no time, did the claimant make Mr. Sheridan or human resources aware of any kind of threat or safety concern involving Mr. Weller.

The administrative law judge is persuaded that the claimant had been told to avoid Mr. Weller's office by Mr. Sheridan in a December 18, 2017 meeting, and again on January 3, 2018 (Employer Exhibit 2, 3, 5). The claimant also knew or should have known that removal of property from an employee's office (regardless of relationship) would violate the employer's reasonable policies (Employer Exhibit 2) which the claimant received training on. Even in the absence of a specific directive, common sense would dictate that the claimant should not be removing items from other peoples' workspaces without permission or notification.

The undisputed evidence is the claimant purposefully entered Mr. Weller's maintenance shop/office after discovering items that she believed were her items, were being stored in his office. The ownership of the actual items is not relevant; at the crux of the case is the claimant's choice to enter into his office and remove items in light of Mr. Sheridan's directive, and in light of Mr. Weller's absence.

The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer's request in light of all circumstances and the employee's reason for noncompliance. *Endicott v. Iowa Dep't of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985). In this case, the employer had specifically directed the claimant to stay out of Mr. Weller's office on at least two occasions. The employer did so because it wanted to prevent conflict or drama from the claimant's pending divorce with her husband, who was also an employee, to spill into the workplace. This was a reasonable expectation and request by the employer. Upon discovering items she believed were hers or which she was entitled, the claimant could have gone to Mr. Sheridan or Human Resources to notify them of her concern, and then request assistance in retrieving them. Instead, she took it upon herself to remove them, deliberately disobeying Mr. Sheridan's directive. It cannot be ignored that was no emergency or necessity warranting the claimant to remove the items; she simply felt entitled to them. The claimant's actions were not professional but purely personal in nature. The credible evidence presented does not support a good cause reason for the claimant's non-compliance with Mr. Sheridan's directive.

Further, when initially questioned about her actions, the claimant was not forthcoming or honest (Employer Exhibit 2). She originally denied being in the maintenance shop/office, which was not accurate, because originally she went down for a paintbrush, before she admitted to being there and removing the items. Honesty is a reasonable, commonly accepted duty owed to the employer. The administrative law judge is persuaded the claimant knew or should have known her conduct on January 25, 2018, and the subsequent investigation was contrary to the best

interests of the employer. Therefore, based on the evidence presented, the claimant was discharged for misconduct, even without prior warning. Benefits are denied.

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 February 22, 2018, (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.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn