

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

MIKAELA L COSPER
Claimant

APPEAL NO: 18A-UI-10886-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAPTIVE PLASTICS LLC
Employer

OC: 09/02/18
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 31, 2018, (reference 01) unemployment insurance decision that denied benefits based upon separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on November 19, 2018. The hearing was held jointly with Appeal 18A-UI-10887-JC-T. The claimant participated personally. The employer participated through Sara Miller, human resources manager.

After the hearing, the claimant sent the Appeals Bureau additional documents in support of her hearing. The hearing notice contained explicit instructions on how to submit documentation prior to the hearing. At the hearing, the claimant stated she had not submitted documents because she failed to read the hearing notice until right before the hearing. Accordingly, the claimant's documents were not considered or given any weight in making the decision.

The administrative law judge took official notice of the administrative records including the fact-finding documents. 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 an inspector-packer on the overnight shift, and was separated from employment on September 5, 2018, when she was discharged for theft.

When the claimant was hired, she was given access to the employer handbook. The employer's handbook contained an ethics code which prohibits theft of company or vendor property. The employer also informed employees upon opening of a micro-market that employees could be discharged for theft of product from the vendor company who ran the market.

The micro-market consisted of food and beverage products that employees could physically retrieve and then purchase through a self-regulated kiosk. Employees had the option to scan the item and purchase with a debit/credit card, or to set up an account to pre-pay and access it with a fingerprint or four-digit pin. In addition, the vending company had a mobile app that would allow employees to select items to purchase without scanning, but rather selecting the items on the app for purchase, which would then make deductions in the employee's mobile account. The micro-market vendor monitored inventory and also had four video cameras in the market for surveillance purposes.

On August 31, 2018, the claimant was suspended pending investigation based upon three transactions reported by the vendor company to the employer, in which the claimant failed to pay for merchandise removed from the mini-market. The employer's investigation revealed the claimant did not use her mobile application (tied to her mini-market account) August 19, 2018 until she reloaded \$5.00 after being suspended on August 31, 2018. The claimant stated she added money even though she was suspended so it would be available when she came back to work.

Ms. Miller stated that review of surveillance footage showed the claimant on August 23, 2018 at 7:33 a.m., the claimant retrieved a Dr. Pepper soda, walked to the kiosk/register, entered an email account into the register, and then cancelled the transaction without scanning the item or paying for it. Then on August 23 and 31, 2018, around 12:51 a.m., the claimant twice retrieved potato skins and Dr. Pepper sodas. She did not scan both items each time, or purchase either item.

The claimant opined she scanned items to verify prices and then used her mobile app to pay for them. A review of the mobile app records provided to the employer from the vendor did not confirm the claimant made payments for items she removed from the market. The claimant could not produce records of payment to contradict the images of the video footage. The employer determined the claimant's conduct to be dishonest and she 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 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 Administrative Code rule 871-24.32(1)a provides:

"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).

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.*

Administrative agencies are not bound by the technical rules of evidence. *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621, 630 (Iowa 2000). A decision may be based upon evidence that would ordinarily be deemed inadmissible under the rules of evidence, as long as the evidence is not immaterial or irrelevant. *Clark v. Iowa Dep't of Revenue*, 644 N.W.2d 310, 320 (Iowa 2002). Hearsay evidence is admissible at administrative hearings and may constitute substantial evidence. *Gaskey v. Iowa Dep't of Transp.*, 537 N.W.2d 695, 698 (Iowa 1995).

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.* The administrative law judge found the employer's hearsay testimony regarding information from its mini-market vendor to be more persuasive than the claimant's explanation for her transactions. 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.

Honesty is a reasonable, commonly accepted duty owed to the employer. . Theft from an employer is generally disqualifying misconduct. *Ringland Johnson, Inc. v. Hunecke*, 585 N.W.2d 269, 272 (Iowa 1998). In *Ringland*, the Court found a single attempted theft to be misconduct as a matter of law. The claimant failed to refute the credible evidence presented by the employer that she removed product three times from the mini-market without proof of purchase, and as observed by the surveillance footage. The administrative law judge is persuaded the claimant knew or should have known her conduct 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.

DECISION:

The October 31, 2018, (reference 01) 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