

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**STEVE NOECKER**

Claimant

**APPEAL 22A-UI-03317-S2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**POTTAWATTAMIE COUNTY AUDITORS**

Employer

**OC: 12/05/21**

**Claimant: Appellant (2)**

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 January 10, 2022, (reference 01) unemployment insurance decision that denied benefits based upon a finding that claimant was discharged due to a violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on March 3, 2022. Claimant Steve Noecker participated. The employer Pottawattamie County participated through chief deputy Jeff Theulen and Captain Steven Winchell.

**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 detention officer from April 29, 2009, until November 22, 2021, when he was discharged.

On October 27, 2021, while working the night shift, claimant posted a comment on a Facebook post. Employer received complaints regarding claimant's comments. The complaints indicated claimant made disparaging comments about the sheriff's department and elected officials. Employer conducted an investigation into the incident and believed claimant used his cell phone in a secured part of the jail where cell phones are prohibited. Claimant admitted to having his phone in the secured area, but he did not use it until inmates were on lockdown, in order to prevent their possible access to it. Other employees carried their cell phones in secured areas as well. Claimant believed he made the post during his lunch break when he was not in the secured area. The investigator asked claimant what time he took his lunch break on October 27, 2021, and he believed he had done so at 11:00 p.m.

On November 19, 2021, employer discharged claimant for being dishonest during the investigation. Detention officers are required to testify in court proceedings, and their credibility

is important. Employer could not continue to employ claimant after it determined he was untruthful. Claimant was not discharged for having his cell phone in the secured area.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant was discharged for no disqualifying reason. Benefits are allowed.

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.

Further, 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).

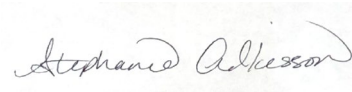
The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d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

The findings of fact show how the disputed factual issues were resolved. 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 the claimant's version of events to be more credible than the employer's recollection of those events. Employer did not present the investigator as a witness. It did not provide the security video or the Facebook posts to show the time the post was made, both of which employer claimed supported its determination that claimant had been dishonest during the investigation. As the claimant presented direct, first-hand testimony while the employer relied upon second-hand reports, the administrative law judge concludes that the claimant's recollection of the events is more credible than that of the employer.

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Claimant credibly testified that he did not lie during the investigation, but that he could not remember the exact time he took his lunch break one week earlier, as he rarely takes his break at the same time each shift but rather at different times within a two-hour period. Further, claimant credibly testified he did not provide the name of someone who commented on his Facebook post because he did not actually see the post and thus did not want to share information that was based in rumor. Employer has not established claimant was dishonest during the investigation. As a result, employer has not met the burden of proof to establish that claimant engaged in misconduct that would disqualify him from benefits. Benefits are allowed.

**DECISION:**

The January 10, 2022, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.



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March 22, 2022  
Decision Dated and Mailed

sa/scn