

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ADRIENE ALFORD

Claimant

APPEAL 19A-UI-05828-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JBM PATROL & PROTECTION CORP

Employer

OC: 01/13/19

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant, Adriene Alford, filed an appeal to the July 19, 2019 (reference 05) initial decision which denied benefits to him based upon his separation with this employer. After proper notice, a telephone hearing was held on August 14, 2019. The claimant participated personally. The employer, JBM Patrol and Protection Corporation, was represented by Robert Baverstock, captain/operations manager. 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 as a full-time security guard beginning February 2019 until he was discharged on June 16, 2019.

When the claimant was hired, he was trained on employer rules and procedures which warn employees that they may be discharged for abandoning their work post without permission. The claimant worked the overnight shift for the employer's client site. His shift began at 6:00 p.m. and ended at 6:00 a.m. He would call a designated phone number to clock in and out of his shifts.

The claimant was discharged after abandoning two consecutive shifts before end time, without employer permission or another officer to relieve him before he left. On June 15, 2019, the claimant began his shift at 6:00 p.m. The employer reported the claimant left his shift at approximately 5:30 a.m. and left a post-it note, asking the relieving officer to clock him out (Baverstock testimony). When later questioned, the claimant reported he left upon seeing the relieving security guard sitting in his vehicle on site (Baverstock testimony).

The following shift began at 6:00 p.m. on June 16, 2019, and the claimant worked until 12:30 a.m. before leaving his post, without clocking out, and without another officer on site to relieve him. The claimant left early due to anxiety and feelings he had associated with a phone call received earlier with his mother in which he learned his son had been involved in a shooting in Chicago.

Based upon the claimant's abandoning the post twice, the client asked the claimant be removed from the assignment. The employer also determined that based upon the claimant's conduct, he was not eligible to be reassigned, and he was discharged.

REASONING AND CONCLUSIONS OF LAW:

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

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).

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.

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.*

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 claimant's sole job as security officer was to remain on post for the employer's client's jobsite. If the claimant needed to leave or his shift was over, he was reasonably expected to have another officer at the post before he left. On his shift that began June 15, 2019, the claimant left his post unattended and without permission approximately thirty minutes early, without clocking out because he saw the relieving officer in his car in the parking lot. He left a note asking the relieving officer to clock him out, which suggests he also requested to be paid for work not completed.

Then the following shift, on June 16, 2019, he left early without coordinating an officer to cover his shift because he was trying to process news regarding his son's involvement in a shooting. The administrative law judge is sympathetic to the claimant and recognizes he may have been overwhelmed. He did not however, request to have the shift off work, or alternately coordinate another officer to come take his post so he could leave. He just left the job site a second time without permission and without adequate coverage of the post. Based on the evidence presented, the claimant has failed to present sufficient evidence to mitigate his noncompliance with the employer's expectation that he not leave his post without permission or adequate coverage.

The administrative law judge is persuaded the claimant knew or should have known his 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 July 19, 2019, (reference 05) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn