

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA A WALKER
Claimant

APPEAL NO. 17A-UI-04960-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FQSR LLC
Employer

OC: 04/17/16
Claimant: Respondent (1)

Section 96.5-2-a – Discharge for Misconduct
Section 96.3-7 – Overpayment

STATEMENT OF THE CASE:

FQSR (employer) appealed a representative's May 2, 2017, decision (reference 03) that concluded Jessica Walker (claimant) was eligible to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 26, 2017. The claimant participated personally. The employer participated by Deanna Williams, Regional Raining Leader, and Kim Razo, Managing Partner. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on March 12, 2012, as a full-time shift supervisor. The employer had a handbook but the claimant did not receive it. The employer talked to the claimant about performance concerns from time to time. On April 16, 2016, the employer issued the claimant a performance improvement plan for customer complaints. The employer notified the claimant that further infractions could result in termination from employment.

The claimant supervised a subordinate who threatened the claimant repeatedly. The claimant reported the threats to the managing partner on March 12, 2017, but nothing was done. The claimant was afraid of the subordinate. On March 26, 2017, the subordinate started arguing with the claimant in a small office. The subordinate said the claimant was a liar and she was going to beat her ass. The claimant said she was not a liar. The subordinate moved closer to the claimant and said she was going to beat her ass today. The claimant said she was not a liar. The subordinate told her to "shut the fuck up" and hit the claimant in the head and face. The claimant covered her face and tried to block the subordinate. The claimant was knocked to the ground, scratched, punched, and had some of her hair out before other workers pulled the subordinate off the claimant. The subordinate left before the police arrived and the claimant was taken away in an ambulance.

The claimant was treated and restricted by her physician from working through April 4, 2017. On March 27, 2017, a No Contact Order was issued restraining the subordinate from further acts of abuse or threats of abuse or contact with the claimant. On March 28, 2017, the claimant completed an employee injury report notifying the employer of her work-related injuries. On April 6, 2017, the employer terminated the claimant based on her employee file. The subordinate was also terminated.

The claimant filed for unemployment insurance benefits with an effective date of April 17, 2017. The employer provided documents in lieu of personal participation in the fact finding interview on May 5, 2017. The fact finder contacted the employer's representative at the time of the interview. The representative stated it did not have anything further to add beyond the written documentation. The documents did not include signed statements from persons with firsthand knowledge of the incident that caused the separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant was not discharged for misconduct.

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).

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). If a party has the power to produce more explicit and direct evidence than it chooses to do, it may be fairly inferred that other evidence would lay open deficiencies in that party's case. *Crosser v. Iowa Department of Public Safety*, 240 N.W.2d 682 (Iowa 1976). The employer had the power to present testimony but chose to provide unsigned written statements. The statements do not carry as much weight as live testimony because the testimony is under oath and the witness can be questioned. The employer did not provide first-hand testimony at the hearing and, therefore, did not provide sufficient eye witness evidence of job-related misconduct to rebut the claimant's denial of said conduct. The employer did not meet its burden of proof to show misconduct. Benefits are allowed.

DECISION:

The representative's May 2, 2017, decision (reference 03) is affirmed. The employer has not met its burden of proof to establish job related misconduct. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs