

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GIFTY SHARTY
Claimant

WEST LIBERTY FOODS LLC
Employer

APPEAL 16A-UI-07470-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/01/15
Claimant: Appellant (2)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 1, 2016, (reference 04) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for insubordination in connection with her work. The parties were properly notified of the hearing. A telephone hearing was held on July 26, 2016. The claimant, Gifty Sharty, participated. The employer, West Liberty Foods, L.L.C., participated through Nikki Bruno, HR supervisor.

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 defrost crew employee from December 28, 2015, until this employment ended on June 1, 2016, when she was discharged.

Claimant last reported to work on Thursday, May 26, 2016. Claimant and Bruno presented two different versions of the events that occurred this day. According to Bruno, claimant became furious because her line finished early and she was told to go home. Claimant told the employer that it made her quit her schooling, and she demanded more hours. She refused to leave the premises, and the employer had to call the police. This insubordination, combined with claimant's late arrival to work on May 23, 24, and 25, her hostile treatment of coworkers during this time, and her failure to promptly report a work injury led the employer to discharge her. Claimant did not have a history of disciplinary actions for any of the issues for which she was discharged. Bruno testified that claimant would have received a copy of the employee handbook and would have signed off on a document stating she understood the major rule violations.

According to claimant, she reported to work on May 26 and she was not feeling well. She informed the lead worker that she was sick, and the lead had her go to first aid, where claimant was given ibuprofen and ice. The lead then told claimant they needed to speak to the supervisor about claimant's illness. Claimant testified that the supervisor refused to sign "the paper," and then the employer discharged her. Claimant believes she was discharged because of her illness. When claimant was waiting outside for her ride to pick her up, the police spoke to

her and told her that Ralston, the operations superintendent, had spoken to them and told them to take claimant to jail.

REASONING AND CONCLUSIONS OF LAW:

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

When the record is composed solely of hearsay evidence, that evidence must be examined closely in light of the entire record. *Schmitz v. Iowa Dep't Human Servs.*, 461 N.W.2d 603, 607 (Iowa Ct. App. 1990). Both the quality and the quantity of the evidence must be evaluated to see whether it rises to the necessary levels of trustworthiness, credibility, and accuracy required by a reasonably prudent person in the conduct of serious affairs. See, Iowa Code § 17A.14 (1). In making the evaluation, the fact-finder should conduct a common sense evaluation of (1) the nature of the hearsay; (2) the availability of better evidence; (3) the cost of acquiring better information; (4) the need for precision; and (5) the administrative policy to be fulfilled. *Schmitz*, 461 N.W.2d at 608. The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976).

Here, the employer contends that claimant violated numerous policies and also refused to leave the premises, prompting a call to the police. However, the employer did not submit any policies and it did not provide a copy of any documentation regarding the police call. It is permissible to infer that the records were not submitted because they would not have been supportive of the employer's position. See, *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976).

The decision in this case rests, at least in part, upon the credibility of the parties. The employer did not present a witness with direct knowledge of the situation. No request to continue the hearing was made and no written statement of the individual was offered. Given the serious nature of the proceeding and the employer's allegations resulting in claimant's discharge from employment, the employer's nearly complete reliance on hearsay statements is unsettling. Additionally, as stated above, the employer did not provide any relevant policies or documentation of the final incident of insubordination. Mindful of the ruling in *Crosser, id.*, and noting that 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.

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 an at-will employment environment 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, it incurs potential liability for unemployment insurance benefits related to that separation. It is unclear what actually transpired on claimant's final day of employment. However, claimant denies that she refused to leave the employer's property. She testified that she was discharged because of her illness, and the employer did not present any firsthand testimony to refute this. The employer has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning. Benefits are allowed.

DECISION:

The July 1, 2016, (reference 04) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Elizabeth Johnson
Administrative Law Judge

Decision Dated and Mailed

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