

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CALI M FIELDS
Claimant

APPEAL NO: 18A-UI-10729-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCE PARTNERS LLC
Employer

**OC: 10/07/18
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 26, 2018, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. A telephone hearing was held on November 13, 2018. The claimant participated personally. The employer participated through Renae Merchant, human resources 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 full-time as an environmental services attendant, and was separated from employment on October 11, 2018, when she was discharged.

The claimant's job duties included providing cleaning and janitorial services to the Hard Rock Casino and Hotel in Sioux City. When the claimant was hired, she was trained on employer rules and procedures, including "rules of the Rock", which included displaying an upbeat, positive attitude, and being courteous to other employees and guests.

Prior to discharge, the claimant had most recently been placed on a final written warning on March 29, 2018. The warning was issued due to the claimant being upset about a raise issue. She was observed both in the back of the house (in the presence of co-workers but not guests) using profanity. When confronted by management, she said something to the effect of, "I can't use the 'F' word but you can fuck me out of a raise?" In addition, she had been observed complaining about the raise issue to another co-worker, in a guest-accessible area.

In addition to the final warning, the claimant had other incidents in which management or human resources spoke to her about use of profanity, being professional even in the “back of the house” and refraining from crying while on shift when upset.

The final incident occurred on October 5, 2018. While the claimant was checking the restrooms, she encountered a guest applying make-up and acknowledged she watched her for a short period of time. The claimant did not speak to the guest or smile at her, or make any other contact. Approximately twenty or thirty minutes later, the same guest was seated at a slot machine and commented to the claimant that she was done with the bathroom now and the claimant could stop staring at her. The claimant could have walked on, or simply apologized to the guest for offending her. The claimant didn't believe she had done anything wrong, and confronted the guest by saying “excuse me?”

Further exchange occurred between the party, and surveillance footage showed the claimant's body language reflecting someone who was upset and agitated over the exchange. Rather than de-escalate the situation and leave, the claimant decided to call security on the guest. The claimant then left and went to the back of the house to perform her duties. On the way, she encountered a hostess who asked her what had happened. When the claimant told her, the hostess commented the claimant could have just apologized. Once in the back of the house, the claimant was observed crying while performing her job duties. The employer investigated and subsequently discharged the claimant on October 11, 2018.

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. Benefits are denied.

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.* 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.*

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).

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.

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). In this case, the claimant worked in a position that required her to interact with both guests and co-workers. She was trained on employer rules and expectations with respect to professional language and interactions. She was placed on a final warning for being confrontational and using inappropriate language on March 29, 2018, and knew or should have known her job was in jeopardy.

The claimant on October 5, 2018, made a guest feel uncomfortable by reportedly staring at her as she applied make up in a bathroom. Regardless of the guest's perception, the claimant had the opportunity to de-escalate any tension when the guest confronted her later at a slot machine. Recognizing the claimant may have been caught off guard, she had several options in response to any rude comment made by the guest, including ignoring the comment and continued on her job duties, or she could have apologized for making the guest uncomfortable. Instead, the claimant engaged with the guest, escalating the matter and further causing a scene by asking security to come. This response was not proportional to an off-hand, rude comment made by a guest.

The claimant further continued to react by stopping to tell another employee about the incident, and then crying in the back while on the clock. The administrative law judge is persuaded the claimant knew or should have known her conduct with respect to the interactions with the guest, calling security and then crying afterwards while in back, was contrary to the reasonable expectations an employer has the right to expect of its employees. The employer has met its burden of proof to establish the claimant was discharged for disqualifying job-related misconduct according to Iowa law. Benefits are denied.

DECISION:

The October 26, 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