

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SARA B MCCARROLL
Claimant

APPEAL 20A-UI-08078-BH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLEANING CONNECTION INC
Employer

OC: 03/15/20
Claimant: Appellant (1)

Iowa Code section 96.5(1) – Voluntary Quit
Iowa Code section 96.5(2)a – Discharge for Misconduct
Iowa Administrative Code rule 871-24.32(1)a – Discharge for Misconduct
Federal Coronavirus Aid, Relief, and Economic Security Act (CARES Act), PL 116-136, section 2104 – Federal Pandemic Unemployment Compensation (FPUC)

STATEMENT OF THE CASE:

Sara B. McCarroll filed an appeal from the June 29, 2020 (reference 04) unemployment insurance decision that denied benefits based upon the conclusion Cleaning Connection, Inc. discharged her for job-related misconduct. The parties were properly notified of the hearing. A telephone hearing was held on August 21, 2020. McCarroll participated and testified. Cleaning Connection participated through general manager Blanca Mathews and chief financial officer Todd Wilson, both of whom testified.

ISSUE:

Did Cleaning Connection discharge McCarroll for job-related misconduct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the undersigned finds the following facts.

Cleaning Connection hired McCarroll on June 26, 2019. McCarroll worked full time as a housekeeping manager. McCarroll's immediate supervisor was Wilson. Cleaning Connection discharged McCarroll on March 12, 2020.

Upon hiring McCarroll, Cleaning Connection gave her an employee handbook. The employee handbook included company policies. One of Cleaning Connection's policies contains the expectation that employees will be honest when performing their work.

Later, Wilson instructed McCarroll to call past customers of the company to ask if they would like to hire Cleaning Connection to provide housekeeping services. Wilson sent McCarroll a spreadsheet with names and phone numbers. McCarroll was supposed to call these individuals and email Wilson the names and numbers of the ten people she called each day.

On March 12, 2020, Wilson reviewed McCarroll's email. He decided to call three of the people McCarroll represented she had called. Wilson discovered McCarroll had not telephoned any of the individuals. One of them even informed Wilson that they wanted housekeeping services.

Wilson called McCarroll into his office with Mathews present. Wilson confronted McCarroll about what he learned when he called three of the individuals on the list of people McCarroll represented she had called when she emailed him. McCarroll claimed she must have erroneously copied and pasted the wrong names and numbers from the spreadsheet.

Wilson did not believe McCarroll's explanation. He made the decision to discharge McCarroll. Cleaning Connection discharged McCarroll for dishonesty, in violation of company policy.

REASONING AND CONCLUSIONS OF LAW:

The evidence establishes Cleaning Connection discharged McCarroll from employment due to job-related misconduct.

Iowa Code section 96.5(2)(a) disqualifies an individual from unemployment insurance benefits if the employer discharged the individual for misconduct. The statute does not define "misconduct." But Iowa Administrative Code rule 871-24.32(1)(a) does:

"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.

The Iowa Supreme Court has consistently held this definition accurately reflects the intent of the legislature in enacting the Iowa Employment Security Law. See, e.g., *Irving v. Employment Appeal Bd.*, 883 N.W.2d 179, (Iowa 2016) (superseded on other grounds by 2017 Iowa Acts ch. 70, § 3 (codified at Iowa Code § 96.5(11)) (citing *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6, 9 (Iowa 1982)).

The employer has the burden to prove misconduct that makes a claimant ineligible for unemployment benefits. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). In unemployment appeals, the question is not whether the employer made the right decision when it discharged the claimant in separating claimant. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). The question is whether the claimant is entitled to unemployment insurance benefits under the law. *Id.*

The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App.

1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

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.*

After assessing the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using the undersigned's own common sense and experience, Cleaning Connection's version of events is more credible than McCarroll's.

As a matter of law under Iowa Code section 96.5(2)(a) and rule 871-24.32(1)(a), dishonesty relating to an individual's employment constitutes misconduct. All Iowa employers are entitled to expect employees to be honest while on the job. This is particularly true when it comes to representations regarding the performance of assigned work duties. Moreover, an employer is entitled to establish reasonable work rules and expect employees to abide by them.

In the current case, Cleaning Connection presented substantial and credible evidence that McConnell was dishonest with respect to the performance of her job duties. This is disqualifying misconduct under Iowa law. Benefits are denied.

DECISION:

The June 29, 2020 (reference 04) unemployment insurance decision is affirmed. Cleaning Connection discharged McCarroll due to job-related misconduct. Benefits are withheld until such time as McCarroll has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Ben Humphrey
Administrative Law Judge

August 26, 2020
Decision Dated and Mailed

bh/sam

NOTE TO CLAIMANT:

- This decision determines you are not eligible for regular unemployment insurance benefits under state law. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision.
- If you do not qualify for regular unemployment insurance benefits under state law and are currently unemployed for reasons related to COVID-19, you may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** For more information about how to apply for PUA, go to:

<https://www.iowaworkforcedevelopment.gov/pua-information>