

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PAULA J BEVERSDORF
Claimant

RAINBO OIL COMPANY
Employer

APPEAL 17A-UI-00543-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/04/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 9, 2017, (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for disqualifying misconduct. The parties were properly notified of the hearing. A telephone hearing was held on February 6, 2017. The claimant, Paula J. Beversdorf, participated. The employer, Rainbo Oil Company, participated through Joyce Hanley, Personnel; and Megan Zuccaro, 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, most recently as an assistant team captain, from December 30, 2015, until December 6, 2016, when she was discharged. On November 27, 2016, claimant and another employee were preparing an order for a large group that came in. After the order had gone out to the group, one of the patrons came up to the counter and stated that she did not receive an order of onion rings. The employer maintains that claimant told this patron that she knew she made the onion rings and knew they went out with the food order. Claimant testified that she commented that she made the onion rings, but she was talking to her coworker and not the patron. The patron then left the counter.

Next, a man who appeared to be the patron's father approached the counter to discuss the missing onion rings. The employer testified that claimant got "pretty loud and unacceptable" and argued with this man instead of making an order of onion rings and solving the problem. Claimant testified that she tried to de-escalate the situation and did not argue with the man who approached the counter. The employer learned about this incident from a customer complaint. According to Zuccaro, while claimant's coworker wrote a statement concurring with the customer's complaint, claimant tried to downplay what happened and explain away the conflict. Hanley testified that it was inappropriate both to argue with a customer and to engage in such an argument with a lobby full of customers observing.

Claimant received a warning on October 1, 2016, for a variety of issues. Hanley stated this warning was given because claimant had been snippy and irritable with teammates and had left customers unsatisfied by taking too long on orders and having an attitude. The employer testified that claimant had a heightened duty to control her attitude as a member of management. Claimant recalled that this warning was about her attitude toward her coworkers only. She denied ever being warned about her attitude toward customers.

REASONING AND CONCLUSIONS OF LAW:

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

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).

Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not

disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

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 her own common sense and experience, the administrative law judge finds the employer's version of events more credible than claimant's version of events. The administrative law judge believes claimant got into an argument with a patron over a missing order of onion rings. While claimant may not have been previously warned specifically for treating customers poorly, she did have a warning in her file regarding the way she treated her coworkers. This put claimant on notice about the way she was expected to behave at work. As a member of management, claimant had a heightened duty to the employer to model appropriate behavior for subordinates and to resolve – not create – conflicts. Claimant's argument with a customer on November 27 amounts to disqualifying misconduct. Benefits are withheld.

DECISION:

The December 4, 2016, (reference 02) unemployment insurance decision is affirmed. 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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