

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

STEVE CORY
Claimant

PURFOODS LLC
Employer

APPEAL 16A-UI-08619-JC

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/03/16
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 27, 2016, (reference 01) unemployment insurance decision that denied benefits based upon separation. The parties were properly notified about the hearing. An in-person hearing was held in Des Moines, Iowa on August 23, 2016. The claimant participated personally. Jessica Cory, wife of claimant, attended but did not testify. The employer participated through Dawn Stevens, payroll and benefits manager. Jodi Cook and Reggie Graeve also testified for the employer. Employer exhibits 1,2,3,4,5 and 6, and Claimant exhibits A,B,C, and D were received into evidence. 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 a fleet supervisor and was separated from employment on July 7, 2016, when he was discharged for insubordination and failure to accept feedback.

In the weeks leading to discharge, the claimant had attended a management course, along with Reggie Graeve, in which professional communications were covered as a topic. In addition, the claimant had been coached in the past about using an “adverse tone” and being cautious when choosing words during professional communications. The claimant had no other disciplinary action. On June 24, 2016, the claimant left work due to his personal truck breaking down and was out of communication with the employer from 11:49 a.m. until after 5:00 p.m., and the employer was trying to contact him repeatedly (Claimant exhibit D). Oliver Borzo, the claimant's manager, later received a text message from the claimant stating he had left his cell phone in the tow truck.

In response, Mr. Borzo alerted the claimant that on July 7, 2016, the claimant would be having a meeting with him and Dawn Stevens, to offer some “constructive feedback” and that he wanted to alert the claimant so he was not “blindsided” (Employer exhibit 6). During the period between notifying the claimant of the proposed meeting and the meeting itself, Mr. Borzo learned of an incident between the claimant and Jodi Cook. Earlier on July 7, 2016, the claimant had requested from Ms. Cook last minute gel packs be furnished for a truck that was leaving (Employer exhibits 4 and 5). Due to the constraints of the request, Ms. Cook confronted the claimant about the request and logistics of completing it. The claimant responded to her that she better get the request filled or the safety inspector won’t be happy, and that he would not help her with the order because he was not in fulfillment. The employer originally intended to have a verbal discussion with the claimant about the towing/lack of communication incident but based on the interaction he had with Jodi Cook (Employer exhibits 4 and 5) the employer decided to escalate the meeting to include a written warning to address the two events.

The employer had no intentions of firing the claimant, and only intended to tender the claimant a written warning (Employer exhibit 2). The warning was never presented because the claimant left the meeting abruptly. At the time of the meeting, which included Oliver Borzo and Dawn Stevens, the employer documented (on the warning) that the meeting ended when the claimant stood up, and said “this is ridiculous. I’m done” (Employer exhibit 2 and Employer exhibit 6) and walked out of the conference room. However, before the meeting ended, the claimant, in an angry tone, told the employer (in response to the Jodi Cook incident) “that email was fine”. The employer agreed the email itself was professional (Employer exhibit 4) but his interaction with Ms. Cook about the request was not. Upon leaving the conference room, the claimant went to his desk. Ms. Stevens went over to the claimant and quietly asked him to come back and speak with her. The claimant refused, stating he was taking a sick day. During the exchange, the claimant reportedly was agitated and repeatedly jabbing his pen towards the desk. He left his shift and was subsequently discharged.

The claimant reported that he was not angry at the meeting but rather, experiencing from a panic attack. The claimant did not present any medical documentation to the employer during his employment or at the hearing to support his medical condition, or that his response on July 7, 2016 was attributed to a panic attack. At no time between the meeting about the warning, when the claimant was at his desk or when he got home and away from work, did he convey to anyone with the employer that he had been experiencing a panic attack and that is why he left the meeting abruptly. The claimant presented text messages that relayed to Mr. Borzo that he was sick physically and mentally (Claimant exhibit D) on May 12, 2016 only.

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.

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.

The law defines misconduct as:

1. A deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment.
2. A deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees. Or
3. An intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer.

Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion do not amount to work-connected misconduct. 871 IAC 24.32(1)(a). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990).

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, including the claimant's conduct during the hearing, the administrative law judge finds the employer's testimony to be more credible than the claimant.

Iowa law has held that a failure to acknowledge the receipt of a written reprimand by signing it constitutes job misconduct as a matter of law. *Green v. Iowa Dep't of Job Serv.*, 299 N.W.2d 651 (Iowa 1980). The credible evidence presented is that the employer alerted the claimant that it was going to speak to him after two incidents occurred on June 24, 2016 and July 7, 2016 regarding his communications with the employer. The employer was unable to tender the intended warning because the claimant refused to participate in the meeting. Instead, the claimant pushed his back his chair, stated "this is ridiculous, I'm done", and forcibly threw down his pen repeatedly, not allowing the employer to finish the meeting or have a second meeting as requested. Then the claimant declared he was sick and leaving. The administrative law judge is persuaded the claimant's case is similar to the *Green* case, inasmuch as an employer has the right to communicate its expectations to employees, whether it be through formal discipline or feedback. The claimant may not have agreed with the contents or felt defensive, but does not negate his refusal to allow the employer to respectfully communicate with him. It cannot be ignored that, the exact issue (unprofessional communications) that the employer intended to discuss with the claimant, was displayed by way of his response to both attempts the employer made to meet with him on July 7, 2016.

The administrative law judge is sympathetic to the claimant's panic attacks. but no competent, medical documentation was provided to the employer or at the hearing that corroborated the claimant's assertion that his response to the meeting on July 7, 2016 was due to a medical issue and not being upset with the employer disciplining him. Further, at no time during either

exchange with the employer, or afterwards, did the claimant make the employer aware that he was needing a moment, experiencing a panic attack or otherwise experiencing a medical episode that would warrant delaying the execution of the written warning; only the claimant's blanket statement of "I'm sick" while displaying behavior consistent with someone upset being disciplined. Based on the evidence presented, the claimant knew or should have known his conduct was in disregard of the employer's interests and reasonable standards of behavior that the employer has a right to expect of its employees. The employer has established the claimant was discharged for misconduct. Benefits are withheld.

DECISION:

The July 27, 2016, (reference 01) unemployment insurance decision is affirmed. The claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs