IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

WILLIAM O ZANDERS Claimant **THE QUEEN OF CLEAN LLC** Employer	**APPEAL 17A-UI-12801-NM-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 11/19/17** **Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 7, 2017, (reference 02) unemployment insurance decision that denied benefits based on his discharge for fighting on the job. The parties were properly notified of the hearing. A telephone hearing was held on January 30, 2018. The claimant participated and testified. Witness Kerrie Patterson also testified on behalf of the claimant. The employer participated through owner Kristi Reiter. Employer's Exhibit 1 through 7 and claimant's Exhibit A were received into evidence.

ISSUE:

Did claimant voluntarily leave the employment with good cause attributable to the employer or did employer discharge the claimant for reasons related to job misconduct sufficient to warrant a denial of benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a cleaning technician from January 6, 2017, until this employment ended on September 28, 2017, when he was discharged.

On September 26, 2017 claimant was working with Patterson and two other employees. Claimant noticed one of the cleaning machines was broken and addressed the matter with one of the other employees, Stormy. Stormy did not appreciate the tone and manner in which claimant addressed her. Stormy phoned Reiter explaining she and the other employee were scared of claimant, based on the way he was acting, and did not feel comfortable being at the client location with him any longer. Stormy and the other employee were then instructed to go work at another location. Claimant testified he is very direct and it can sometimes come off as harsh, but denied he did anything to have made his coworkers feel threatened. Claimant went on to state he believes he is being unfairly characterized because everyone he works with is female. Claimant further testified he is a very hard worker who expects things to be done right and expects others to do things correctly. According to claimant Stormy did not share this same

belief and he contends she exaggerated the situation to Reiter because she was upset with him for expecting her to work.

The September 26 incident was not the first time employees had complained of the way claimant spoke to them. On September 19, 2017, there was a situation in which a new employee, Steffan, refused to work with claimant after claimant used profanity toward him and called him a snowflake. (Exhibit 7). Claimant testified his comments were based on remarks made by Steffan indicating he had "heard about claimant" and was reluctant to work with him. Claimant denied he was ever spoken to or disciplined for this incident, but testified he and Steffen were reassigned to different locations by Reiter for the remainder of the night. On August 1, 2017, claimant was issued a written warning for arguing with other employees. (Exhibits 3 and 6). Claimant was advised he needed to refrain from escalating his anger and keep calm while at work. Claimant was advised further violations would lead to termination of employment.

On September 28, 2017, a meeting was held with claimant, Reiter, and Patterson. Prior to this meeting Patterson had sent an email, purportedly on behalf of herself and claimant, indicating the two would be quitting in two weeks. Claimant testified it was not, in fact, his intention to quit, but that he had planned on speaking with Reiter about possibly moving to part-time. Before this could be discussed in the meeting, claimant was handed a disciplinary action for the September 26 incident. (Exhibit 5). The disciplinary action indicated claimant was being discharged from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant did not quit but was discharged from employment for no disqualifying reason.

Iowa Code §96.5(1) provides:

> An individual shall be disqualified for benefits:
>
> 1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.26(21) provides:

> Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:
>
> (21) The claimant was compelled to resign when given the choice of resigning or being discharged. This shall not be considered a voluntary leaving.

Since claimant would not have been allowed to continue working, even if he wanted to, the separation was a discharge, the burden of proof falls to the employer, and the issue of misconduct is examined.

Iowa Code section 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.

871 IAC 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 Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). 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). 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). 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).

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, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, including the claimant's tone and demeanor during the hearing, and using her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events.

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented substantial and credible evidence that claimant continued to speak to his coworkers in a threatening and disrespectful manner after having been warned. While claimant may have considered his behavior to be firm and direct, rather than threatening, his coworkers clearly felt otherwise. The employer advised claimant that his conduct was not acceptable and, on August 1, 2017, warned him that further incidents may lead to termination. Despite the employer's warning, claimant continued to engage in similar behavior. This is disqualifying misconduct.

DECISION:

The December 7, 2017, (reference 02) unemployment insurance decision is affirmed. The claimant did not quit but 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.

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Nicole Merrill
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs