

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EFFRIN V HOBBS
Claimant

STAFF MANAGEMENT SOLUTIONS LLC
Employer

APPEAL 20A-UI-00604-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/15/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant/appellant, Effrin V. Hobbs, filed an appeal from the January 17, 2020 (reference 03) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on February 5, 2020. The claimant participated. The employer, Staff Management Solutions LLC., registered witness, Susan Murphy, who was unavailable when called at the hearing time. A voicemail was provided, directing her to call the Appeals Bureau immediately to participate.

The administrative law judge took official notice of the administrative records. 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.

Note to claimant: Additional information about food, housing, and other resources, can be found by dialing 211 or at www.211iowa.org.

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 worked on assignment for this employer, part-time, at Proctor & Gamble, beginning in summer 2019 until the assignment ended on November 12, 2019. The claimant was informed by Sue that the assignment was ending and that he was no longer eligible for future assignments. The claimant stated he had no prior warnings and was unaware of any policy or rule he broke which led to being told he was fired.

Prior to the assignment ending and being fired, the claimant and employer representative, Sue, had a disagreement because the claimant had tried to report absences to the employer which were due to his full-time employment with APLA, and because he was frustrated for being sent home by the employer's client when there was not work available to him, after paying \$15.00 each shift in cab fare.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason.

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.* Assessing the credibility of the claimant 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 not 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.

The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa App. 1984). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. IDJS*, 425 N.W.2d 679 (Iowa App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be “substantial.” *Newman v. Iowa Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep’t of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

Iowa Admin. Code r.871-24.32(8) provides:

(8) Past acts of misconduct. While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

The claimant worked for this employer on a part-time basis at Proctor & Gamble until November 12, 2019 when he was fired from the assignment and employment. In this case, the employer reportedly discharged the claimant based a disagreement about his schedule, both in the context that he had been absent, and due to his frustration of being sent home when no work was available. No evidence was presented that the disagreement escalated to a point of unprofessional, threatening or otherwise egregious enough to warrant immediate discharge. The employer did not attend the hearing or refute the claimant's evidence. The employer failed to provide detailed facts as to the specific reason for the claimant's discharge and failed to establish the claimant was discharged for a final or current act of misconduct by a preponderance of the evidence. Accordingly, benefits are allowed, provided he is otherwise eligible.

Nothing in this decision should be interpreted as a condemnation of the employer's right to terminate the claimant for violating its policies and procedures. The employer had a right to follow its policies and procedures. The analysis of unemployment insurance eligibility, however, does not end there. This ruling simply holds that the employer did not meet its burden of proof to establish the claimant's conduct leading separation was misconduct under Iowa law.

DECISION:

The unemployment insurance decision dated January 17, 2020 (reference 03) is reversed. The claimant was discharged for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge
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Decision Dated and Mailed

jlb/rvs