

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JOSEF P WOLF**  
Claimant

**SEARS MANUFACTURING CO**  
Employer

**APPEAL 18R-UI-03883-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/14/18**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 6, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged for failing to follow instructions. The parties were properly notified of the hearing. A telephone hearing was held on April 19, 2018. The claimant, Josef P. Wolf, participated. The employer, Sears Manufacturing Company, participated through Trisha Taylor, Human Resources Manager; Rachell Crable, Assembler; and Karen Dekezel, Assembler. Employer's Exhibits 1, 2A, and 2B were received and admitted into the record.

**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 assembler, from February 23, 2004, until January 19, 2018, when he was discharged. On January 17, 2018, claimant had an altercation with Crable, his co-worker. That day, Crable had asked claimant to fix a cover for her. Claimant took the cover to another co-worker and had her fix it using a sewing machine. When claimant brought the fixed cover back to Crable, he found that Crable acquired a cover from someone else. Claimant felt he had wasted 20 minutes of his time helping Crable, and he became upset. He yelled at Crable, told her that she was not allowed to waste his time any longer, and mocked her. Claimant did not use profanity or threaten Crable. Claimant admits that he had sworn at Crable in the past in the presence of a supervisor. Claimant was not disciplined for this incident. Claimant and Crable worked in a production environment, and according to claimant, "everybody yells at everybody." The employer contends claimant had behaved in a similar manner multiple times over the year prior to the final incident. However, the employer did not learn about any prior incidents until after commencing its investigation of what happened on January 17.

## REASONING AND CONCLUSIONS OF LAW:

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

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).

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 claimant presented credible testimony regarding the final incident. All parties agree that claimant was upset with and yelled at Crable on January 17. While the employer described claimant's behavior as "aggressive" and contended it violated the workplace violence policy, the employer did not present any specific facts that indicate claimant was behaving in a threatening or violent manner.

In an at-will employment environment an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy. Here, claimant was not aware that his job was in jeopardy or he could lose his job for yelling at Crable on January 17. While claimant's behavior on January 17 was not appropriate workplace conduct, it does not rise to the level of disqualifying misconduct without a prior warning. Benefits are allowed.

**DECISION:**

The February 6, 2018, (reference 01) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided he is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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