

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMY L CONLON
Claimant

APPEAL 19A-UI-09317-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**HUMBOLDT COUNTY MEMORIAL
HOSPITAL**
Employer

OC: 10/27/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant, Amy L. Conlon, filed an appeal from the November 21, 2019 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 19, 2019. The claimant participated personally and was represented by Stuart L. Higgins, attorney at law. The employer, Humboldt County Memorial Hospital, participated through Emily Reiners, attorney at law. Employer witnesses included Michelle Sleiter, CEO, AJ Mason, CFO, and Mary Moritz, human resources director, testified.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Employer Exhibits 1-9 were admitted. 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 an accountant and was separated from employment on October 29, 2019, when she was discharged (Employer Exhibit 1).

The employer has a written chain of command policy, which states in part that hospital employees are accountable to the Administrator, through whom all communication to the board is channeled (Employer Exhibit 2). The claimant was trained on employer policies at hire and had access to employer rules and policies (Employer Exhibit 5). Based upon the chain of command policy, the claimant’s first contact would be AJ Mason, and then administrator, Michelle Sleiter.

The claimant’s job duties included reconciling the employer’s accounts, response to audit inquiries, and other tasks as assigned (Employer Exhibit 7). While she was not a member of management, she did have access to information as it related to payments made to employees.

In October 2019, the claimant requested a private meeting with a Board of Trustees member. While there, she asked the member if he was aware of certain pay incentives that executive members of the staff had received. The claimant was not amongst the employees who had received a bonus or incentive payment. She stated she met with him to determine the legitimacy of the payments. This inquiry was unrelated to the performance of her job duties. The claimant indicated she had received conflicting information from Mr. Mason and other managers about whether payments were being issued. Rather than direct the other managers to Mr. Mason, Ms. Sleiter or human resources, the claimant took it upon herself to meet with the Board member.

In addition, the claimant inquired about the purchase of alcohol using the company issued credit card. The claimant had previously discussed concerns with Mr. Mason and no policy violation was determined. In addition, the claimant had contact with external auditors who reviewed the employer's financial records, including the receipts containing alcohol purchases.

The Board of Trustees member contacted the employer on October 28, 2019 to report the meeting had occurred. The claimant had requested the meeting be kept confidential. When the employer questioned the claimant about whether she had a meeting, she was dishonest. She originally stated to the employer that she had met with the member for her personal taxes and that discussion ensued about the workplace, rather than she scheduled the meeting solely to discuss matters related to the employer. She was subsequently discharged.

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 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).

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. 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).

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 witnesses 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 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 claimant in this case was an accountant for the employer. This position was unique in the sense that the claimant had behind the scenes access to the employer’s finances and payments made on behalf of the employer, but had no authority to make the decisions of who was receiving payments, or whether they were deserving or proper. If the claimant had concerns about matters related to the execution of her job duties, she had a chain of command as established by written employer policy. The chain of command reasonably allows individuals closest to a potential situation to be able to resolve the matter before it is escalated, although the administrative law judge recognizes situations where it may not be always possible. This is not such case though.

The question of whether the refusal to perform a specific task constitutes misconduct must be determined by evaluating both the reasonableness of the employer’s request in light of all circumstances and the employee’s reason for noncompliance. *Endicott v. Iowa Dep’t of Job Serv.*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

In this case, the claimant bypassed the established chain of command when she requested a meeting with a Board of Trustees member in October 2019. The claimant outlined two primary issues discussed: alcohol purchase with the employer credit card, and incentive pay that executives had received. If the claimant had genuine concern that the employer had been violating established policy with the purchase of alcohol on company credit cards, she had several people she could have discussed the issue with before going to the Board of Trustees member. Besides her manager, she had Ms. Sleiter, the CEO, Ms. Moritz, the human resources director (who should have been well-versed in employer policy) or even the external auditors with whom she interacted with from time to time. The claimant failed to establish a good cause reason for bypassing multiple people to report concerns related to alcohol purchases.

As it related to issues of incentive payments made to executive members of staff, the claimant asserted she took the issue to the board member because she was receiving conflicting

information from her manager and other managers about who was receiving incentive payments. While the claimant may have been caught between conflicting positions, it was not her duty to address, verify or mediate issues related to incentive payments. Reasonably if a manager questioned her about who was receiving incentive payments, she could direct them to her manager, the CEO or human resources. The claimant failed at the hearing to establish the payments being made were illegal, or an otherwise persuasive reason which would warrant immediate reporting to a higher authority and bypass the chain of command.

It cannot be ignored that when the employer discovered the claimant had bypassed the chain of command and asked her about her meeting, she was purposefully dishonest, telling the employer the meeting had been for her own personal tax issues and that the issue of the employer came up at that time. If the claimant believed the employer somehow was engaging in unethical or illegal conduct which warranted her bypassing the chain of command, it is puzzling why she would justify her conduct by being dishonest when questioned by the employer. Honesty is a reasonable, commonly accepted duty owed to the employer. The administrative law judge is persuaded the claimant knew or should have known her conduct was contrary to the best interests of the employer.

The claimant has failed to establish a good cause reason for her failure to follow the established chain of command by going to the Board of Trustees instead of the employer's management or human resources. She was then dishonest to the employer once it was discovered. Based on the evidence presented, the administrative law judge concludes the claimant was discharged for misconduct, even without prior warning. Benefits are denied.

The parties are reminded that under Iowa Code § 96.6-4, a finding of fact or law, judgment, conclusion, or final order made in an unemployment insurance proceeding is binding only on the parties in this proceeding and is not binding in any other agency or judicial proceeding. This provision makes clear that unemployment findings and conclusions are only binding on unemployment issues, and have no effect otherwise.

DECISION:

The November 21, 2019, (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 she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

Decision Dated and Mailed

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