

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHELLE D SCOTT
Claimant

ALDI INC
Employer

APPEAL 21A-UI-07506-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/23/19
Claimant: Appellant (5)

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

STATEMENT OF THE CASE:

On March 12, 2021, Michelle Scott (claimant/appellant) filed a timely appeal from the Iowa Workforce Development decision dated March 8, 2021 (reference 03) that denied benefits based on a finding claimant was discharged from work on November 16, 2020 for using profane language.

A telephone hearing was held on May 24, 2021. The parties were properly notified of the hearing. The claimant participated personally. Aldi Inc (employer/respondent) participated by District Manager David Hallinan. Store Manager Butch Koestler participated as a witness for employer. Employer was represented by Hearing Rep. Alyce Smolsky.

Official notice was taken of the administrative record.

ISSUES:

- I. Was the separation from employment a layoff, discharge for misconduct, or voluntary quit without good cause?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time store associate. Claimant's first day of employment was September 10, 2020. The last day claimant worked on the job was October 28, 2020. Claimant's immediate supervisor was Koestler. Claimant separated from employment on November 16, 2020. Claimant was discharged by Hallinan on that date.

Claimant was discharged due to disrespectful and profane communications with Hallinan as well as dishonesty about COVID-19 test results. Claimant contacted Koestler in late October 2020 and informed him that she had tested positive for COVID-19. Koestler informed her that because of the positive test she could not return to work for two weeks. Employer also requested claimant provide a copy of the test results so that she could be paid during the period she was in quarantine.

Claimant told Hallinan she had asked her provider to fax the results to employer; however, employer never received these results. Hallinan contacted the provider on November 10, 2020 to ask the results be sent again. At that time he learned from speaking to the hospital director that it had no record of claimant requesting the documents be sent and that it had notified her on October 29, 2020 that she had tested negative, not positive.

Hallinan and claimant had communications via phone and text around November 10, 2020, regarding when claimant could return to work. Claimant was disrespectful and used profane language toward Hallinan in these communications. Claimant responded in much the same way when Hallinan informed her of her discharge.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the decision dated March 8, 2021 (reference 03) that denied benefits based on a finding claimant was discharged from work on November 16, 2020 for using profane language is MODIFIED with no change in effect.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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 disqualification shall continue 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 provides in relevant part:

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).

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers v.*

Emp't Appeal Bd., 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. 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 Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. When based on carelessness, the carelessness must actually indicate a "wrongful intent" to be disqualifying in nature. *Newman, Id.* In contrast, 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. *Newman, Id.*

When reviewing an alleged act of misconduct, the finder of fact may consider past acts of misconduct to determine the magnitude of the current act. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). However, conduct asserted to be disqualifying misconduct must be both specific and current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App. 1988).

Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

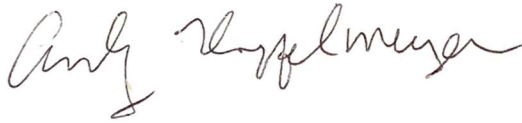
It is the duty of the administrative law judge, as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none 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.*

Claimant essentially argues the reasons for her discharge were fabricated by Hallinan. The administrative law judge finds it very unlikely that employer would fabricate the reasons for the discharge, including the specific disrespectful and profane language Hallinan testified claimant used in her communications with him. It is also very difficult to believe that Hallinan would fabricate his communications with claimant's medical provider regarding her COVID-19 diagnosis. Hallinan was also more clearly able to remember dates and the specific content of communications than claimant. For these reasons, the administrative law judge found the testimony by Hallinan to be more credible and reliable than the testimony from claimant. Factual findings were made accordingly.

Employer has carried its burden of proving claimant is disqualified from receiving benefits because of a current act of substantial misconduct within the meaning of Iowa Code section 96.5(2). Claimant's dishonesty regarding her COVID-19 test results and her disrespectful and profane language toward Hallinan constitute a disregard of standards of behavior which the employer has the right to expect of employees. Benefits are denied. The decision is modified solely to reflect that claimant's discharge was for dishonesty in addition to being for using profane language.

DECISION:

The decision dated March 8, 2021 (reference 03) that denied benefits based on a finding claimant was discharged from work on November 16, 2020 for using profane language is MODIFIED with no change in effect. Claimant's separation from employment was disqualifying. Benefits must be denied, and employer's account shall not be charged. This disqualification shall continue until claimant has earned wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is not otherwise disqualified or ineligible.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
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Fax (515) 478-3528

June 3, 2021
Decision Dated and Mailed

abd/kmj

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.