

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TRACIE A HAHN
Claimant

R C CASINO LLC
Employer

APPEAL 21A-UI-17687-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/02/21
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant, Tracie A. Hahn, filed an appeal from the August 3, 2021, (reference 02) unemployment insurance decision that denied benefits based upon the determination that the employer, R C Casino, LLC, discharged claimant for failure to follow instructions in the performance of her job. The parties were properly notified of the hearing. A telephone hearing was held on October 4, 2021. The claimant participated personally. The employer participated through Courtney Remley.

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 as an EVS associate from December 19, 2018, until this employment ended on June 19, 2020, when she was discharged.

On June 19, 2020, claimant was working by herself in a busy section to which she had been assigned. At one point during the night, the supervisor came up to her and said she had failed to take glasses to the bar timely. Claimant was confused because she had just finished a cart of glasses to the bar. The supervisor called her to the security guard's office where they requested her badge and other employer equipment and dismissed her. Claimant understood this to mean she had been discharged. On June 23, 2020, Supervisor Amber Bolio contacted claimant and confirmed that claimant had been discharged.

Claimant had received prior warnings for failure to "keep up" with her assigned section. The most recent had been issued June 13, 2020. On that occasion, the employer issued the warning because claimant had not maintained her section to the employer's standards and had been seen speaking with a coworker after being informed that her section and an assigned restroom needed attention.

In March 2020, claimant had received a final warning for failure to maintain her assigned section to the employer's standards. That warning stated that, because this was a final warning, if performance did not improve, the employer would be forced to terminate claimant's employment.

REASONING AND CONCLUSIONS OF LAW:

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

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).

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). 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).

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.

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon*, 275 N.W.2d at 448. Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To do so is to impermissibly shift the burden of proof to the claimant. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa Ct. App. 1986).

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, and using her own common sense and experience, the administrative law judge finds the claimant's version of events to be more credible than the employer's recollection of those events. Specifically, claimant credibly testified that she was performing her job to the best of her ability at the time that she began, and continued, receiving warnings for job performance, including during the final incident. She believed that she was issued warnings because her supervision changed and because she made complaints about other employees bullying her. Furthermore, the employer did not produce a witness with first-hand knowledge of claimant's performance, and it did not demonstrate that, despite the ability to do her job well, she intentionally failed to do so.

The employer has not demonstrated that, despite warnings, and despite the ability to do her job well, claimant intentionally disregarded the employer's instructions. Mere inability to meet the employer's expectations, without more, does not constitute disqualifying misconduct. Benefits are allowed.

DECISION:

The August 3, 2021, (reference 02) unemployment insurance decision is reversed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.



Alexis D. Rowe
Administrative Law Judge

October 06, 2021
Decision Dated and Mailed

ar/ol