

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

PAMELA S REEVES
Claimant

APPEAL 21A-UI-15877-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

“COSTCO WHOLESALE CORPORATION
Employer

**OC: 04/18/21
Claimant: Appellant (1)**

Iowa Code § 96.5(1) - Voluntary Quit
Iowa Code § 96.5(2)a - Discharge for Misconduct

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 16, 2021, (reference 01) unemployment insurance decision that denied benefits based upon claimant being discharged from work on April 12, 2021 for violation of a known company rule. The parties were properly notified of the hearing. A telephone hearing was held on August 27, 2021. The claimant, Ms. Reeves participated and testified and was represented by her attorney, Mr. Jim Duff. The employer participated through Matt VanBlaricon, along with Christina Peterson (claimant's direct supervisor).

ISSUES:

Did the claimant voluntary quit without good cause attributable to the employer? Was the claimant discharged for disqualifying job-related misconduct?

FINDINGS OF FACT:

Having heard the testimony and reviewed all of the evidence in the record, the administrative law judge finds: claimant's first day of employment with employer was November 16, 2004 and her last day worked was March 29, 2021. Claimant was discharged on April 12, 2021 for violating the company's policy regarding dishonesty, specifically grazing and theft/fraud. Claimant was aware of the employer's policy on this matter, most recently signing off on receiving a copy on March 11, 2019. Claimant was also responsible for enforcing company policies, as claimant was the deli manager for employer.

On March 16, 2021, claimant took a bag of chips (\$5.99 value) from the sales floor to the office without paying for the chips. While no registers were open, she did not ask for one to open so she could pay. Claimant consumed some of the chips in the office. Claimant was paged to the deli area and left the chips in the office. On March 22, 2021, claimant took the partially consumed bag of chips with her when leaving her place of work. At no point in time did claimant pay for the chips. On March 29, 2021, claimant was placed on paid suspension regarding the above referenced dishonesty policy violation. The paid leave lasted March 29, 2021 and up to and including April 4, 2021. On April 5, 2021, claimant was placed on unpaid suspended leave for

this dishonesty policy violation, which lasted up to and including April 11, 2021. On April 12, 2021, claimant was discharged for violation of the dishonesty policy, theft and grazing. An investigation of this matter by employer established the incident (video footage) and in talking with witnesses to incident and claimant's statements. Employer testimony verified that of the persons they were aware of whom violated this policy, all were terminated.

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 Code section 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.

871 IAC 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 Department of Job Service*, 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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995).

Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). Poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp’t Appeal Bd.*, 423 N.W.2d 211 (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 of the administrative code definition of misconduct is on deliberate, intentional or culpable acts by the employee. *Id.*

When based on carelessness, the carelessness must actually indicate a “wrongful intent” to be disqualifying in nature. *Id.* Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer’s interests. *Henry v. Iowa Dep’t of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986).

Further, poor work performance is not misconduct in the absence of evidence of intent. *Miller v. Emp’t Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

Eating the chips on the property without paying for them, while called grazing in the policy handbook, is theft from the employer. Leaving the employer’s property with the chips without paying for them is further evidence of the ongoing theft from the employer. Theft from an employer is generally disqualifying misconduct. *Ringland Johnson, Inc. v. Hunecke*, 585 N.W.2d 269, 272 (Iowa 1998). In *Ringland*, the Court found a single attempted theft to be misconduct as a matter of law. In this case, the claimant deliberately disregarded the employer’s interest by her conduct and knowingly violated company policy. The claimant engaged in disqualifying misconduct even without previous warning.

The employer has presented substantial and credible evidence that claimant was caught violating the dishonesty policy by taking the employer’s potato chips, consuming about half the bag in the store and taking the bag of chips home a few days later, at no point paying for the chips. This behavior was contrary to the best interests of the employer and is disqualifying misconduct, even without a prior warning.

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 his

own common sense and experience, the administrative law judge finds the employer version of events to be more credible than the employee recollection of those events. Benefits are denied.

DECISION:

The July 16, 2021, (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.



Darrin T. Hamilton
Administrative Law Judge

September 13, 2021
Decision Dated and Mailed

dh/scn