

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ADAM G LUCAS
Claimant

HY-VEE INC
Employer

APPEAL NO. 20R-UI-13950-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/21/20
Claimant: Appellant (1)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated September 2, 2020, reference 01, which held claimant ineligible for unemployment insurance benefits. Claimant appealed that matter, but failed to register for the previous appellate hearing. Claimant appealed the dismissal, and this matter was remanded to the Appeals Bureau for further actions. After due notice, a hearing was scheduled for and held on January 5, 2021. Claimant participated personally. Employer participated by hearing representative Barbara Buss and witnesses Abby Beier and Jeff White. Claimant's exhibits A-E and employer's exhibits 1-6 were admitted into evidence.

ISSUE:

Whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on June 25, 2020.

Employer discharged claimant on June 25, 2020 because claimant was found to be on his cell phone for an extended period of time while on duty as a security guard after receiving a warning about the same type of activity a few weeks earlier.

Claimant worked as a security guard for employer on their main campus. As a part of his duties we was supposed to walk the buildings and the campus and monitor video cameras of the areas.

In April of 2018 claimant signed a phone use document indicating that usage was to be severely limited by security workers. In 2019 employer sent out a document allowing limited calls or texting if there was no one in the immediate vicinity.

Claimant was issued a warning on June 4, 2020 when he was observed playing games on his phone and ignoring the screens he was to be monitoring for over an hour. The warning indicated that additional indiscretions could lead to additional actions up to termination.

On June 22, 2020 claimant was seen on video entering a small room with no video cameras in the room. Fifteen minute later, claimant was still in the small room. His supervisor entered the room to find claimant on his phone. Claimant was terminated on June 25, 2020 for this action after warning.

Claimant stated that he was talking with his brother who was having difficulties. Claimant called this an emergency. He did not bother to tell anyone where he was or what he was doing. He did not share this information with his supervisor when confronted, nor with human resources when he was being terminated.

REASONING AND CONCLUSIONS OF LAW:

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(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).

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

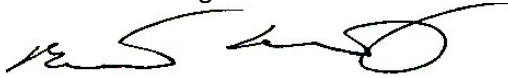
It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. 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. *State v. Holtz*, 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. *State v. Holtz*, Id.

The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. In this matter, the evidence established that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning cell phone usage while at work. Claimant was warned concerning this policy.

The last incident, which brought about the discharge, constitutes misconduct because claimant could and should have dealt with the matter differently, in a way that respected employer's interests. Instead, claimant, who was supposed to be providing security for employer was hidden away for 15 minutes speaking to someone on the phone. The fact that claimant did not provide the reason he was on the phone to his supervisor when confronted or to human resources at the time of discharge draws into question the veracity of the statement. Even if true, if it was an emergency situation, claimant could have gone to a supervisor, clocked out and attended to his brother's needs, and then come back to work. Claimant instead chose to hide out to have an extended phone call while on the clock shortly after receiving a warning for not doing his job. The administrative law judge holds that claimant was discharged for an act of misconduct and, as such, is disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated September 2, 2020, reference 01, is affirmed. Unemployment insurance benefits shall be withheld until claimant has worked in and been paid wages for insured work equal to ten times claimant's weekly benefit amount, provided claimant is otherwise eligible.



Blair A. Bennett
Administrative Law Judge

January 21, 2021
Decision Dated and Mailed

bab/kmj