

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**BARBARA J VAN HOUTEN**  
Claimant

**ABCM CORPORATION**  
Employer

**APPEAL NO. 21A-UI-02311-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/25/20**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated December 21, 2020, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on March 3, 2021. Claimant participated personally and with witness Brenda Zimmerman. Employer participated by Tabitha Gonnerman. Claimant's exhibit A and employer's exhibits 1-4 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 October 25, 2020.

Employer discharged claimant on October 27, 2020 because claimant was not honest when asked about whether she had worked her other job at a different care facility. Claimant worked at employer's care facility. Additionally claimant worked occasional hours at another care facility in Holstein, Iowa for Good Samaritan Society. On or around October 25, 2020 employer found out that the Holstein facility had a Covid outbreak. Employer texted claimant surrounding the need to be in contact as there was a Covid concern. When employer spoke with claimant, employer asked if claimant had worked at the Holstein facility during the dates in question. Claimant was evasive and then denied working at the facility at the dates in question.

Employer did further research into claimant's work at the facility and not only found a schedule that showed claimant working at the other facility on the dates in question, but employer spoke with claimant's coworkers at the facility who also stated claimant worked on the dates in question. Employer then terminated claimant's employment for her dishonesty in a matter that concerns patient safety.

Claimant gave multiple statements that were not credible during her testimony. Claimant worked full time for employer. Claimant stated she did not work her second job after October

17, 2020. Investigation of IWD documents shows employer from Good Samaritan as having paid claimant for 150 or so hours of work in two weeks of October. These hours were on top of her full time work for ABCM Corp. This is not credible as the hours worked for Good Samaritan would be at least 10x the average weekly hours claimant had worked for Good Samaritan over the previous year.

### **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,

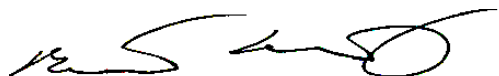
part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *State v. Holtz*, Id. In determining 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. In this matter, claimant's testimony was not credible. Claimant's lack of credibility on the issue of hours worked at the other job weighs heavily on whether claimant lied to the administrator when asked of her work hours.

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 honesty with employer.

The last incident, which brought about the discharge, constitutes misconduct because claimant's dishonesty concerned matters surrounding Covid and the care for elderly individuals. Employer is justified in its concern that employees need to be honest about potential encounters with people of facilities with Covid. 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 December 21, 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.



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Blair A. Bennett  
Administrative Law Judge

March 9, 2021  
Decision Dated and Mailed

bab/lj