

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDREA E JONES

Claimant

STEPPING STONE FAMILY SVCS INC

Employer

APPEAL 18A-UI-05362-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/01/18

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 25, 2018, (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was discharged from employment for failure to follow instructions. The parties were properly notified of the hearing. A telephone hearing was held on May 30, 2018. The claimant, Andrea E. Jones, participated. The employer, Stepping Stone Family Services, Inc., participated through Rebecca Bolton, Habilitation Coordinator; Aaron Herman, Community Based Services Coordinator; and Lucas Millage, Executive Director. Claimant's Exhibits A through G were received and admitted into the record without objection.

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, most recently as a habilitation counselor, from September 5, 2017, until March 30, 2018, when she was discharged. On March 26, claimant had a meeting with Bolton in connection with her returning to work from short-term disability leave. Bolton gave claimant her new case assignments and the two reviewed claimant's caseload. They also discussed claimant's former client, Client A. Claimant was informed that Client A had been transitioned to another counselor and was receiving services from that person. Claimant was instructed not to contact Client A. Bolton expressed that she would be in contact with Client A and that perhaps down the road, Client A could receive services from claimant again.

On March 28, claimant went into the McDonald's where Client A worked. Claimant approached Client A and asked her if she had a few minutes to talk. Claimant and Client A proceeded to have a conversation. Claimant told Client A to call Bolton and request that she be reassigned to claimant. Later that day, Client A contacted her current counselor to report the conversation. On March 30, Herman met with Client A and confirmed her report regarding the contact she had with claimant on March 28. Client A was upset and confused by what had occurred, and she was concerned about getting claimant into trouble. During this meeting, Client A also showed

Herman a text message she had received from claimant while claimant was on short-term disability leave. The employer discharged claimant for insubordination, based on claimant's contact on March 28.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying, job-related misconduct. Benefits are withheld.

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). 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). 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). In insubordination cases, the reasonableness of the employer's demand in light of the circumstances must be evaluated, along with the worker's

reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985). The key to such cases is not the worker's subjective point of view but "what a reasonable person would have believed under the circumstances." *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988); accord *O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993) (objective good faith is test in quits for good cause).

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, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge finds the employer's testimony more credible than claimant's testimony.

Here, claimant acknowledges that she was told not to contact Client A. Claimant then went to the McDonald's where Client A worked and spoke with her about the services she was receiving from the employer. The evidence shows that claimant deliberately approached Client A and requested to have a conversation with her, disobeying the employer's instruction to her. Claimant's actions upset Client A and were in deliberate disregard of the employer's interests in caring for its clients and providing them competent care and services. Even if claimant did not specifically tell Client A not to tell her counselor about the conversation, claimant's behavior amounts to insubordination. The employer has established that claimant was discharged from employment due to disqualifying, job-related misconduct. Benefits are withheld.

DECISION:

The April 25, 2018, (reference 02) unemployment insurance decision is affirmed. 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn