

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**VERONICA VALDEZ**  
Claimant

**IOWA PREMIUM LLC**  
Employer

**APPEAL 18R-UI-00241-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/22/17**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

Veronica Valdez (claimant) filed an appeal from the November 14, 2017, reference 01, unemployment insurance decision that denied benefits based upon the determination Iowa Premium, LLC. (employer) discharged her for engaging in conduct which was not in its best interest. A telephone hearing was scheduled for December 8, 2017, and notices were mailed to the parties. The claimant did not register for the hearing and the administrative law judge issued a decision dismissing the appeal. The claimant appealed the decision to the Employment Appeal Board (EAB) who remanded the case for a new hearing. The parties were properly notified about the hearing. A telephone hearing was held on January 31, 2018. The claimant participated. The employer did not respond to the hearing notice and did not participate. Spanish interpretation was provided by Paloma (employee number 11274) from CTS Language Link. No exhibits were offered into the record.

**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: The claimant was employed full-time as a Laborer beginning on September 25, 2016, and was separated from employment on October 23, 2017, when she was discharged. As part of the hiring process, an employee is asked to disclose any prior injuries to the medical department.

On October 23, 2017, the claimant went to the nurse's office to discuss a stomach ache. While she was there, she and the nurse discussed the bandage the claimant had on her wrist. The claimant disclosed to the nurse at that time that she had carpal tunnel surgery on her wrist ten to 12 years prior while working for another employer. The nurse checked the claimant's records and discovered she had not disclosed it prior to her physical. The claimant purposely did not disclose the records as she feared she would not be hired. She was aware that not disclosing the prior surgery could result in her discharge. The employer discharged her for falsification of documents.

## 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. Benefits are denied.

Iowa law disqualifies individuals who are discharged from employment for misconduct from receiving unemployment insurance benefits. Iowa Code § 96.5(2)a. They remain disqualified until such time as they requalify for benefits by working and earning insured wages ten times their weekly benefit amount. *Id.* Iowa Administrative Code rule 871-24.32(1)a provides:

“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). 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).

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.*

The findings of fact show how the disputed factual issues were resolved. After assessing the credibility of the witness who testified during the hearing, the reliability of the evidence submitted, considering the applicable factors listed above, and using her own common sense and experience, the administrative law judge does not find the claimant's testimony that she disclosed the prior injury to an HR employee who was helping her fill out the medical documents, is not credible. This claim was inconsistent with her testimony regarding prior statements made to an Iowa Workforce Development (IWD) representative. Her testimony that she was unaware the falsification could lead to the end of her employment is not credible for the same reasons.

The employer has an interest in having trustworthy employees and accurate documentation. The claimant purposely did not disclose the prior injury because she was worried she would not get the job. The claimant's conduct was a deliberate disregard of the employer's interest and the reasonable expectation an employer has that its employees will be honest. This is misconduct without prior warning. Benefits are denied.

**DECISION:**

The November 14, 2017, 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.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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