

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROBERT A BYRNE
Claimant

APPEAL 21A-UI-09018-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOVES TRAVEL STOPS AND COUNTRY S
Employer

**OC: 02/07/21
Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.5(1) – Voluntary Quitting

STATEMENT OF THE CASE:

On March 31, 2021, claimant, Robert A. Byrne, filed an appeal from the March 29, 2021, reference 01, unemployment insurance decision that denied benefits based upon the determination that employer, Love's Travel Stops and Country S, discharged him for violation of a known company rule. The parties were properly notified about the hearing held by telephone on May 27, 2021. The claimant participated personally. The employer participated through District Manager Kevin Elwood. Employer's witness General Manager Andy Anderson also participated. Employer's exhibits 1 through 3 were admitted into evidence after overruling a hearsay objection made by claimant.

ISSUE:

Did the employer discharge the claimant for 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 an operations manager in Sioux City, Iowa beginning on January 6, 2020, and was separated from employment on February 11, 2021, when he was discharged from employment.

In early February 2021, Elwood received notice of two complaints about alleged conduct by claimant. Specifically, on January 29, 2021, an anonymous complaint was submitted to the employer's ethics hotline alleging that claimant made comments about a subordinate's sex life and about his own sexual history. Thereafter, on February 1, 2021, Andy Anderson also notified Elwood of complaints he had received from two other team members who reported that claimant commented on another subordinate's body.

Based on this information, Elwood initiated an investigation. He spoke with nine people in total, including claimant. Claimant denied making the comments alleged and expressed surprise and distress at the allegations. He theorized that some of his subordinates disliked him because of his supervision style and because of his willingness to correct or challenge them. Claimant

suspected that one in particular, Jessi Paulsen, was the source of the complaints against him. Another interviewee confirmed that Paulsen had expressed interest in “taking [claimant’s] job.” Four of the people interviewed by Elwood reported overhearing or being the target of inappropriate comments by claimant, one of whom was Paulsen. Claimant noted that another of those interviewed, Morgan Kenney, had also made inappropriate remarks in front of him, and commented to an unnamed coworker that claimant would not “be [her] boss much longer.”

Elwood determined that the claims against claimant were substantiated based on his investigation, and he recommended termination. Human Resources and the divisional director agreed with the recommendation. On February 11, 2021, Elwood met with claimant and terminated his employment. Prior to his termination, claimant had received no verbal or written warnings of any kind.

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 § 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 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.

The employer has the burden to prove the claimant was discharged for job-related misconduct. *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982). The question is not whether the employer made the correct decision in ending claimant's employment, 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 justifying termination of an employee and misconduct warranting denial of unemployment insurance benefits are two different things. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

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 is not 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). 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 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, 394–95 (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 her own common sense and experience, the administrative law judge finds the employer's version of events to be more credible than the claimant's recollection of those events. Claimant's refutation of the allegations against him centered on interpersonal and supervisory disagreements he had with two specific subordinates. While claimant alleges two of his subordinates had reason to fabricate allegations against him, two subordinates about whom claimant did not express concerns also corroborated the allegations against claimant. Furthermore, claimant's assertion that all of his subordinates were vindictive and colluded to make allegations against him is not credible.

Claimant's actions violated the standards of behavior that any employer has a right to expect from its employees. This is misconduct even without prior warning. The employer has carried its burden and established by a preponderance of the evidence that claimant violated its policy prohibiting harassment, and engaged in job-related misconduct.

DECISION:

The March 29, 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 he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Alexis D. Rowe
Administrative Law Judge

June 14, 2021
Decision Dated and Mailed

ar/kmj