

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ARLENE A COLEMAN
Claimant

FINANICAL PLUS CREDIT UNION
Employer

APPEAL 20A-UI-01662-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 01/26/20
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from the February 13, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on March 11, 2020, at 11:00 a.m. Claimant participated. Employer participated through Dave Cale, President/CEO; Bridgette Raleigh, Loan Officer; and Susan Kiesner, Vice President of Operations. Claimant's Exhibits A – F were admitted. Employer's Exhibit 1 was admitted.

ISSUE:

Whether claimant's separation was a discharge 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 as a full-time IT Support Specialist from June 12, 2012 until her employment with Financial Plus Credit Union ended on January 29, 2020. Claimant worked Monday through Friday from 8:00 a.m. until 5:00 p.m. Claimant's direct supervisor was Dave Cale, President and Chief Executive Officer.

On January 29, 2020, claimant overslept and was late to work. Claimant had prior warnings for attendance and tardiness and believed her job was in jeopardy. Claimant told Cale that she had been at work since 8:00 a.m. at employer's Euclid and Fleur branches. Employer checked surveillance video and learned that claimant was not at either of the branches as she claimed. Employer also discovered that claimant asked a coworker to tell Cale that claimant was at employer's Ingersoll branch since 8:00 a.m. if Cale asked. On January 29, 2020, employer discharged claimant for dishonesty.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code section 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 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:

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). Further, 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The law limits disqualifying misconduct to substantial and willful wrongdoing or repeated carelessness or negligence that equals willful misconduct in culpability. *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661 (Iowa 2000).

It is the duty of the administrative law judge, as the trier of fact, 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 evidence you believe; 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 I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find employer's testimony to be more credible than claimant's testimony. For example, claimant's testimony was not supported by her own text messages exchanged with employer.

An employer can reasonably expect honesty from its employees without a formal policy or prior warning. Claimant was intentionally dishonest with employer regarding her whereabouts on January 29, 2020. Furthermore, claimant attempted to involve a coworker in her dishonesty. Claimant's actions were a substantial and deliberate violation or disregard of standards of behavior employer had a right to expect of her. As an information technology professional in a credit union, claimant had access to customer's confidential information. Common sense dictates a person working in claimant's position needs to be trustworthy in order to maintain employment. Claimant's honesty has a direct connection to her ability to perform her employment duties. Employer discharged claimant because it lost confidence in her trustworthiness. Claimant's dishonesty was misconduct. Employer discharged claimant for disqualifying job-related misconduct. Benefits are denied.

DECISION:

The February 13, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged for disqualifying job-related misconduct. Benefits are denied until claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Adrienne C. Williamson
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Decision Dated and Mailed

acw/rvs