

IOWA DEPARTMENT OF INSPECTIONS & APPEALS
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

Appeal Number: 15IWDUI082
OC: 2/16/15
Claimant: Appellant (1)

Decision of the Administrative Law Judge

EILEEN K. MAYNES
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WEST DES MOINES, IOWA 50266

SCHELDROP BLADES SCHROCK SAND
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IOWA WORKFORCE DEVELOPMENT
JONI BENSON

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to the Department. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

April 24, 2015

(Decision Dated & Mailed)

STATEMENT OF THE CASE

The Appellant, Eileen Maynes, filed an appeal from a decision issued by Iowa Workforce Development (the Department or IWD) dated February 16, 2015 (reference 01). In this decision, IWD determined that the Appellant was not eligible to receive unemployment insurance benefits. The decision stated that the Appellant was discharged from work for causing dissension among other employees. The Appellant's employer was Scheldrup, Blades, Schrock & Sand.

This case was transmitted from IWD to the Department of Inspections and Appeals on March 2, 2015 to schedule a contested case hearing. A notice of telephone hearing was mailed to all parties on March 3, 2015. This matter came on for telephone hearing on March 27, 2015 before Administrative Law Judge Kristine Dreckman. The Appellant appeared together with her counsel, attorney Marlon Mormann. Kent Smith represented the employer and presented testimony. The Appellant offered a packet marked as Exhibit A that consisted of sixteen pages of documents that was admitted without objection.

ISSUES

Whether the Department was correct in finding that the claimant had been discharged for misconduct; and whether the Department correctly determined the claimant is ineligible to receive unemployment insurance benefits.

FINDINGS OF FACT

The Appellant began her employment with Scheldrup, Blades, Schrock & Sand (Scheldrup) as a legal secretary on October 3, 2012, in its West Des Moines, Iowa location. By all accounts, the Appellant had a number of conflicts with her co-workers. In May, 2013, the Appellant appears to have been involved in a conflict with another employee over the placement of a postage machine. The Appellant was engaged in another dispute on May 23, 2014. According to the Appellant, the conflict occurred at that time when her co-worker, Susan Simonton, engaged in calling her names, yelled at her and invaded her personal space. The Appellant reported the incident to her supervisors, including Kent Smith. The Appellant deemed the conflict significant enough that she notified two supervisors that day, at approximately 1:00 p.m., that she was leaving to avoid what she considered a “hostile work environment.” (Maynes Testimony; Smith Testimony; Exhibit A3, A7-9).

Sometime thereafter, a meeting occurred between the Appellant, Mr. Smith and Ms. Simonton. Andrea Jacob, Director of Professional Services, was also present. According to Mr. Smith, he informed the Appellant at that time that she was expected to engage in professional behavior and that included treating her co-workers with respect. Mr. Smith testified that he specifically told the Appellant that if she continued to engage in conflict with her coworkers, she would be terminated. According to the Appellant, however, the meeting was only to discuss Ms. Simonton’s behavior, and not her own. She denied ever being warned that continued conflict with her coworkers would lead to her termination. The Appellant did, however, acknowledge that Mr. Smith specifically told her that she was expected to behave professionally, and that she was to treat her coworkers respectfully. In short, both parties agree that the Appellant was told she needed to get along with Ms. Simonton, but disagree that she was warned she would be fired if she did not. (Maynes Testimony; Smith Testimony).

Another conflict occurred between the Appellant and Ms. Simonton sometime in early December, 2014. The parties agree that shortly thereafter, a meeting took place between Mr. Smith, the Appellant, and Ms. Jacobs, who was present through a video-conferencing system. The Appellant denied that the meeting was to discuss her behavior, but rather Ms. Simonton’s. The Appellant testified that she was told at that time that she needed to have “thicker skin” and that she was “too sensitive.” Mr. Smith, however, maintained that they met with the Appellant at that time explained the firm’s expectation that she get along with her coworkers and behave professionally, and if she did not she would lose her job. At hearing, the Appellant denied that Smith informed her that her failure to do so would result in termination. However, during the fact finding interview held conducted by IWD on February 13, 2015, the Appellant reported that Smith “indicated that if there was another meeting someone would be let go.” (Maynes Testimony; Smith Testimony; Fact Finding Workset for Misconduct).

Mr. Smith and Ms. Jacob also met with Ms. Simonton regarding the ongoing conflict with the Appellant. A transcript was provided of that meeting, but not of the meeting between Smith, Jacob and the Appellant. The transcript of Simonton's meeting shows that Mr. Smith instructed her to be polite and respectful in her communications to the Appellant. Mr. Smith also commented in that meeting that he felt the Appellant was too sensitive, and that Ms. Simonton needed to be aware of that for future interactions. Mr. Smith further pointed out in that meeting that he believed Ms. Simonton to be getting along with all other employees besides the Appellant. (Maynes Testimony; Smith Testimony; Exhibit A13-14).

The Appellant's final conflict in the office occurred on January 27, 2015. According to the Appellant's testimony at hearing, on that date a co-worker, Brenda Glasner, confronted her and called her names. The Appellant testified that she removed herself from the situation and went to her desk. She further testified that she "had a right to confront Brenda, and tell her, politely, to stop calling me names." According to the Appellant, Mr. Smith's handling of the previous confrontations left her feeling that her employer would be of no assistance to her, and that she needed to handle the matter on her own. The Appellant approached Ms. Glasner, who was located in front of Mr. Smith's office, to confront her about her behavior. The Appellant acknowledged she was yelling at that time. The commotion interrupted Mr. Smith's telephone conversation, which he abruptly ended to break up the conflict between the two women. (Maynes Testimony; Smith Testimony).

Shortly thereafter, Mr. Smith contacted the other members of the firm via email and recommended that she be terminated. The other members agreed, and the Appellant was subsequently dismissed from her employment. Mr. Smith maintained that the Appellant was immediately terminated because he had met with the Appellant on three previous occasions to discuss her unprofessional behavior and her inability to get along with her co-workers, and she had been warned each time that if it continued, she would be terminated. The Appellant maintained that she had not been previously warned she could be terminated for her behavior, and that the firm's handbook issued January 1, 2015 required one written warning before termination. The Appellant further suggested her termination for misconduct was mere pretext for discrimination based upon her disability.¹ Lastly, the Appellant suggested Ms. Simonton was favored by her employer because her duties made her harder to be replaced. (Smith Testimony; Maynes Testimony; Exhibit A2, A4-6; A12; A15-16).

CONCLUSIONS OF LAW

An individual is disqualified from receiving unemployment insurance benefits if she has been discharged for misconduct in connection with employment.² The employer has the burden of proving that the claimant is disqualified from receiving benefits because she was discharged for misconduct.³

¹The claim of discrimination on the basis of disability is not an issue that can be determined in this administrative proceeding regarding a claim for unemployment insurance benefits; and therefore, will not be addressed in this opinion.

² Iowa Code § 96.5(2).

³ Iowa Code § 96.6(2).

Misconduct is a deliberate act or omission which constitutes a material breach of the employee's duties and obligations. It is limited to conduct which demonstrates willful or wanton disregard of an employer's interest, such as deliberate violation or disregard of standards of behavior that the employer has the right to expect, or recurrent careless or negligence that shows an intentional and substantial disregard of the employer's interests or the employee's obligations. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, isolated incidents of ordinary negligence, and good faith errors in judgment are not misconduct.⁴ While past acts of misconduct and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.⁵ An employee's failure to follow the repeated instructions of her supervisor over a period of time constitutes misconduct.⁶

In this matter, both parties acknowledge that multiple individuals were present at the time Mr. Smith met with the Appellant to discuss her conflicts with others in the workplace. Unfortunately, neither party presented the testimony of the other parties involved in those meetings. Therefore, the undersigned administrative law judge only has the conflicting claims of Mr. Smith and the Appellant regarding what occurred during those times. At hearing, the Appellant testified that each time she met with her employers, the discussion was focused on her co-workers' poor behavior and not her own. Mr. Smith testified that the Appellant was repeatedly advised that she was expected to behave professionally in the workplace, and that she would face termination if she did not do so.

In this case, the undersigned has carefully evaluated the credibility of each party's testimony. There are many factors used when considering the credibility of a witness. Some of the most common factors are: whether a person's statements are reasonable; whether the individual provides consistent statements over time; whether the person appears credible to the listener; whether the person is competent in terms of age, memory and knowledge; and whether the person has a motive or bias.⁷

In this matter, the Appellant has not provided consistent statements over time. She claimed at the hearing that her behavior was never at issue and that she was never warned she could face termination for engaging in further conflicts. During the fact-finding interview, however, the Appellant acknowledged that Mr. Smith specifically warned her that if they met again regarding another conflict among the employees, that that "someone would be let go." The undersigned further determines that the Appellant's statements at the hearing were not reasonable. She claimed at hearing that Mr. Smith never met with the Appellant about her own behavior. The Appellant testified the meetings were always to discuss another co-worker's behavior. The evidence presented by the Appellant showed that she engaged in conflicts with multiple individuals at the workplace. It is not reasonable to believe that her employers would

⁴ 871 Iowa Administrative Code (IAC) 24.32(1).

⁵ 871 IAC 24.32(8).

⁶ *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa App. 1990).

⁷ *State v. Hotlz*, 548 N.W.2d 162, 163 (Iowa App. 1996) (citing Uniform Jury Instructions).

meet on multiple occasions with the Appellant and never address her own culpability in those situations.

For these reasons, the undersigned finds it more reasonable to believe Mr. Smith's claims that the Appellant was instructed on more than one occasion that she was expected to behave professionally and treat her co-workers with respect in the workplace. When the Appellant engaged in yet another conflict that resulted in raising her voice at another co-worker, she failed to follow her employer's instructions to conduct herself with an appropriate standard of behavior expected at the workplace. For these reasons, the undersigned determines that the Appellant's behavior on the date in question constituted misconduct.

DECISION

Iowa Workforce Development's decision dated February 16, 2015 (reference 01) is **AFFIRMED**. The agency shall take any action necessary to implement this decision.

kmd.