

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

APRIL LEWIS
Claimant

RISE LTD
Employer

APPEAL 20A-UI-01793-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/15/19
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant/appellant, April Lewis, filed an appeal from the February 19, 2020 (reference 05) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on March 16, 2020. The claimant participated personally. The employer, RISE Ltd, participated through Karel Clark, hearing representative with Talx UCM Services Inc. Jessie Pensel, executive director, and Sabrina Hull, director of services, both testified. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

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 employer provides human services to individuals with intellectual disabilities, brain injuries and mental illness. The claimant was employed full-time as a direct support professional beginning January 13, 2020 and discharged on January 20, 2020. The claimant performed less than two days of work.

When the claimant was hired, she was trained on the employer rules and procedures, which included being respectful in the workplace. The claimant had prior experience as a direct support professional and was also aware that she was a mandatory reporter in her role.

On January 19, 2020, the claimant shadowed her coworker. Approximately one hour into her shift, the claimant left the premises where they were working and went to her car, where she called Sabrina Hull, to complain about the coworker. The coworker had told the claimant something to the effect of taking time before making changes to the existing structure at the facility, based upon ideas the claimant communicated upon arrival. The claimant alleged the coworker was fifteen minutes late to the shift, had violated rules of confidentiality and was a possible drug user. During the call, the claimant threatened the employer, stating she would report the employer to the state if needed. Ms. Hull listened to the claimant and told her she

could clock out and return to shadow another coworker at the next shift, if she felt more comfortable. The claimant elected to return to work and continue shadowing with the coworker. The claimant stated she told the employer, "please tell me I'm not going to be retaliated against."

The next day, before the claimant worked a second shift, she contacted Ms. Hull again. She asked Ms. Hull if she had a few minutes. The call lasted between 21-40 minutes (Pensel testimony/Claimant testimony). Ms. Hull was on the way to a meeting, but said yes, thinking the call would be brief. Ms. Pensel was in the room during the call, and could not hear the claimant but heard what Ms. Hull was saying in response.

The claimant renewed her complaints about the coworker from the day before and demanded a consequence of the coworker immediately. Ms. Hull told the claimant repeatedly that she would have to look into it, as she felt it was important to validate the concerns but also afford the coworker an appropriate investigation before jumping to conclusions. Ms. Pensel stating Ms. Hull repeatedly acknowledged the claimant's concerns but kept stating she would not take immediate action as demanded by the claimant. The claimant was unsatisfied with the response and renewed her threats to the employer, stating, "whatever I need to do, I will." The claimant ended the call by hanging up on Ms. Hull.

The claimant denied hanging up on Ms. Hull and said that she ended the call by saying "I appreciate your time" before disconnecting. She further denied that she was threatening the employer but that as a mandatory reporter, she had a legal and moral obligation to take action. The following day, the employer called the claimant to discharge her.

The employer also did follow up with an investigation based upon the concerns raised by the claimant.

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 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).

In an at-will employment environment, an employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, it incurs potential liability for unemployment insurance benefits related to that separation. The employer has the burden of proof in establishing disqualifying job misconduct. *Cosper v. Iowa Department of Job Service*, 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. IDJS*, 364 N.W.2d 262 (Iowa 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. IDJS*, 425 N.W.2d 679 (Iowa 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 Department of Job Service*, 351 N.W.2d 806 (Iowa App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

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.*

In this case, the administrative law judge carefully considered and weighed the employer's evidence, which consisted of two witnesses, including the manager to whom the claimant hung up on, against the claimant's testimony. The administrative law judge also evaluated the demeanor of the parties during the hearing, including the claimant's conduct, which was similar to what alleged with the employer during her employment. The administrative law judge concludes that the weight of evidence is established in favor of the employer. Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer has satisfied its burden to establish by a preponderance of the evidence that the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

In this case, the claimant was discharged for her conduct on January 19 and 20, 2020, after just one day of shadowing on the job. The employer did not warn the claimant prior to discharge. Disqualification for a single misconduct incident must be a deliberate violation or disregard of standards of behavior which employer has a right to expect. *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432 (Iowa Ct. App. 1991).

The claimant was discharged based upon her conduct with Ms. Hull, in which she called to complain about a coworker twice, threatened the employer and ended the second call by hanging up on her manager. In other words, it was not the fact the claimant reported concerns to the employer, but *how* she communicated them. Cognizant that a mandatory reporter would be obliged to report certain conduct, the employer (and state agency) would also be obliged to conduct an investigation upon receipt of complaints. None of the concerns raised by the claimant about her coworker warranted an emergency or haste response, bypassing reasonable due process, even though she may have wanted one.

While it is true that “good faith belief that claimant's actions were authorized is judged by objective, not subjective, standards”. *Aalbers v. Iowa Dep’t of Job Serv.*, 431 N.W.2d 330 (Iowa 1988), the administrative law judge is not persuaded that the claimant’s references of threatening to call the state were made in good faith, or out of “legal and moral obligation” but rather bullying in response to the employer not immediately acting upon her demand that her coworker be reprimanded. For whatever reason, whether established before, or during the one day of employment, the claimant did not like this coworker and wanted her discharged from employment, based solely on her complaint, rather than allowing the employer to conduct an investigation. Good faith belief that reporting the coworker to the employer did not excuse the claimant’s demeanor and demands when reporting the coworker.

The claimant’s tone with the employer was aggressive, combative and even threatening, after only one day on the job. This is a deliberate violation or disregard of standards of behavior which employer has a right to expect. The administrative law judge is persuaded the claimant did not respectfully end the phone call on January 20, 2020. The administrative law judge is also persuaded the claimant knew or should have known her conduct was contrary to the best interests of the employer. Therefore, based on the evidence presented, the claimant was discharged for misconduct, even without prior warning. Benefits are denied.

DECISION:

The unemployment insurance decision dated February 19, 2020, (reference 05) 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.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

March 27, 2020
Decision Dated and Mailed

jlb/scn