

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHELLY E HIGGINS
Claimant

FASTENAL CO INC
Employer

APPEAL 24A-UI-05973-PT-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/05/24
Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

The claimant, Shelly Higgins, filed an appeal from a decision of a representative dated June 12, 2024, (reference 01) that held the claimant ineligible for unemployment insurance benefits after a separation from employment. After due notice, a telephone hearing was held on July 12, 2024. The claimant participated personally. The employer, Fastenal Co. Inc., participated through Accounts Receivable Analyst-Lead April Lange and Accounts Receivable Manager Misty Rask. The administrative law judge took official notice of the administrative record.

ISSUE:

Was the claimant discharged for disqualifying, job-related misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: The claimant began working for Fastenal Co. Inc., in September 2004. In June 2022, the claimant became a full-time accounts receivable analyst. The claimant separated from employment on May 6, 2024, when she was discharged.

As an accounts receivable analyst, the claimant was responsible for working with each of the corporate clients whom she was assigned, by contacting the client, analyzing their past due invoices, finding patterns, and presenting solutions for their problems. The employer has a written employee manual containing its work rules, policies, and a general description of the claimant's job duties. The claimant received a copy of the employee manual and was generally familiar with the employer's work rules and policies.

One of the corporate client's to whom the claimant was assigned was Amazon.com. Throughout 2023, the Amazon.com account grew significantly and the claimant's workload increased with it. In October and November 2023, the claimant had several conversations with her supervisor about feeling overwhelmed and needing help with the Amazon.com account. In December 2023, the employer hired a new analyst to help assist with the account, which allowed the claimant to catch-up on some of her work for her other clients.

In January 2024, the claimant's supervisor implemented a new department standard requiring analysts to "engage more" with the clients in their portfolio. Specifically, the claimant's supervisor wanted the analysts to contact their clients more frequently and provide faster responses to their questions. The new requirements effectively increased the workload for all analysts.

Through the winter and spring of 2024, the Amazon.com account continued to grow and, even with the additional help, the claimant struggled to respond to all of the emails she was receiving in a timely manner. By early-March 2024, the claimant had accumulated 385 emails from her clients that she had not managed to respond to. On March 6, 2024, the employer issued the claimant a verbal warning for unsatisfactory work performance due to her failure to respond to her clients' emails in a timely manner.

Additionally, on March 6, 2024, the employer removed the Amazon.com account from the claimant's portfolio and placed the claimant on a 90-day performance improvement plan (PIP). The PIP period began March 6 and ended June 6, 2024. Pursuant to the PIP, the claimant was required to meet with her supervisor once per week. The PIP broadly instructed the claimant that she must "show improvement" on all of her remaining accounts during the 90 day period.

Throughout March 2024, the claimant met with her supervisor once per week and made progress responding to emails and assisting the remaining clients in her portfolio. The claimant felt she was doing her job well and that her job was secure. However, in early-April 2024, one of the claimant's coworkers left and the employer assigned one of the coworkers larger, more complex accounts to the claimant. Through most of April 2024, the claimant spent a significant amount of her time trying to learn the new account. Despite giving her best effort, the extra time spent learning the new account caused the claimant to engage less frequently with several of the other clients in her portfolio.

In early-May 2024, the employer reviewed the claimant's portfolio and determined that the claimant had not sufficiently engaged with several of the clients in her portfolio. On May 6, 2024, the employer called the claimant into a meeting and informed the claimant that her employment was being terminated effective immediately due to unsatisfactory work performance.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code section 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 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:

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.

Iowa Admin. Code r. 871-24.32(4) provides:

(4) *Report required.* The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

Iowa Admin. Code r. 871—24.32(5) provides:

(5) Trial period. A dismissal, because of being physically unable to do the work, being not capable of doing the work assigned, not meeting the employer's standards, or having been hired on a trial period of employment and not being able to do the work shall not be issues of misconduct.

The employer has the burden of proof in establishing disqualifying job-related 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 the 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 focus is on deliberate, intentional, or culpable acts by the employee.

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). 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). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990); however, "Balky and argumentative" conduct is not necessarily disqualifying. *City of Des Moines v. Picray*, (No. 85-919, Iowa Ct. App. Filed June 25, 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 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 the claimant's testimony that she tried to follow the employer's instructions and perform her job to the best of her ability credible. The administrative law judge concludes the claimant did not intentionally fail to perform the duties and expectations of her position.

Failure in job performance due to inability or incapacity is not considered misconduct because the actions were not volitional. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979). Mere incapacity or incompetence is not disqualifying. Iowa Admin. Code r. 871-24.32(1)(a); see also, *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa 1984). Where an individual is discharged due to a failure in job performance, proof of that individual's ability to do the job is required to justify disqualification, rather than accepting the employer's subjective view. To simply accept the employer's subjective view is to impermissibly shift the burden of proof to the claimant. See *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552 (Iowa App. 1986).

In this case, the employer has failed to show that the claimant ever had a sustained period of time during which she performed her job duties to the employer's satisfaction. The evidence demonstrates that the claimant made some progress towards the performance areas established by her supervisor, but fell behind again in April 2024 when the claimant acquired a new, complex account. While the claimant may have failed to meet the employer's performance expectations, the progress the claimant made is enough to demonstrate that the claimant was not willfully or wantonly disregarding the standards of behavior the employer had a right to expect of her. Inasmuch as the claimant did attempt to perform the job to the best of her ability, but was unable to meet the employer's expectations, no intentional misconduct has been established, as is the employer's burden of proof. Accordingly, no disqualification is imposed. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The June 12, 2024 (reference 01) unemployment insurance decision is reversed. The claimant was discharged from employment on May 6, 2024, for no disqualifying reason. The claimant is eligible to receive unemployment insurance benefits, provided the claimant meets all other eligibility requirements.



Patrick B. Thomas
Administrative Law Judge

July 16, 2024
Decision Dated and Mailed

pbt/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.