

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

JERALD J KOOB
Claimant

JOSEPH L ERTL INC
Employer

**APPEAL 22A-UI-16135-AR-T
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/24/22
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

On August 15, 2022, the claimant filed an appeal from the August 10, 2022, (reference 01) unemployment insurance decision that denied benefits based on the determination that claimant was discharged for having too many at-fault accidents. The parties were properly notified about the hearing. A telephone hearing was held on September 14, 2022. Claimant, Jerald J. Koob, participated personally. Employer, Joseph L. Ertl, Inc., participated through Teresa Westhoff.

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: Claimant began working for employer on September 15, 2021. Claimant last worked as a full-time material handler and driver. Claimant was separated from employment on July 20, 2022, when he was discharged.

On July 19, 2022, claimant was involved in an accident with the forklift he was driving. Specifically, he got it stuck on the edge of the loading dock and caused damage to the forklift. Claimant was issued a disciplinary warning for this incident on July 19, 2022. He was also sent for drug and alcohol testing based on the accident and the employer's observations about his conduct that day. He was warned that future similar accidents could result in discipline up to and including discharge.

On July 20, 2022, claimant was driving one of the employer's vehicles when he backed into a customer's truck. The customer saw this occur, and the truck also had video of the incident. The customer brought the incident to the attention of the employer. Claimant did not report the accident to the employer. The employer brought claimant to the office and informed him that he had backed into the customer's truck and inquired why he had not reported the accident as required by the employer's safety policy. Claimant asserted he had not seen or felt the impact. The impact caused \$1,500.00 in damage to the customer's truck, for which the employer was responsible. Because claimant had two safety incidents in two days, and because he had not

reported the July 20, 2022, incident to the employer, the employer discharged claimant on July 20, 2022.

Claimant received one additional disciplinary warning for safety during his employment. In March 2022, claimant received a disciplinary warning after causing damage to an employer vehicle. He knocked out the light on a van when he collided with another object. In May 2022, claimant also received a warning from the Department of Transportation due to an incident in which he crossed the outside line of the highway with a vehicle. The employer told claimant that a warning from the DOT was a serious matter and he needed to be cautious and vigilant when driving a vehicle.

REASONING AND CONCLUSIONS OF LAW:

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

Effective July 1, 2022, Iowa Code section 96.5(2) provides in relevant part:

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.

...

d. For the purposes of this subsection, "*misconduct*" means a deliberate act or omission by an employee that constitutes a material breach of the duties and obligations arising out of the employee's contract of employment. Misconduct is 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. Misconduct by an individual includes but is not limited to all of the following:

- (1) Material falsification of the individual's employment application.
- (2) Knowing violation of a reasonable and uniformly enforced rule of an employer.
- (3) Intentional damage of an employer's property.
- (4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer,

or a combination of such substances, on the employer's premises in violation of the employer's employment policies.

(5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer's premises in violation of the employer's employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.

(6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.

(7) Incarceration for an act for which one could reasonably expect to be incarcerated that results in missing work.

(8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.

(9) Excessive unexcused tardiness or absenteeism.

(10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.

(11) Failure to maintain any license, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual's regular job duties, unless the failure is not within the control of the individual.

(12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.

(13) Theft of an employer or coworker's funds or property.

(14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

Recently, Governor Reynolds signed into law House File 2355, which among other things amended Iowa Code section 96.5(2) to further define misconduct and to enumerate specific acts that constitute misconduct. The bill did not include an effective date and so took effect on July 1, 2022. See Iowa Const. art. III, § 26; Iowa Code § 3.7(1).

A claimant's discharge from employment must be based on a current, substantial act of job-related misconduct in order to disqualify the claimant from unemployment insurance benefits. The employer bears the burden of proof in such cases. *Myers v. Emp't Appeal Bd.*, 462 N.W.2d 734, 737 (Iowa Ct. App. 1990). In order to constitute misconduct, the conduct at issue must consist of deliberate acts or omissions or such carelessness as to indicate a wrongful intent. *Kelly v. Iowa Dep't of Job Serv.*, 386 N.W.2d 552, 554 (Iowa Ct. App. 1986). And while prior acts of misconduct may be considered in determining the magnitude of the current act, the discharge

must be based on a current and specific act of misconduct to be disqualifying. *Id.*; Iowa Admin. Code r. 871—24.32(8).

The issue in such cases is not whether the employer had the right to terminate the 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, 264 (Iowa Ct. App. 1984). What constitutes misconduct justifying termination of an employee and what constitutes misconduct disqualifying a claimant from unemployment insurance benefits are two separate questions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of unemployment insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806, 808 (Iowa Ct. App. 1984). Misconduct must be "substantial" in order to support a disqualification from unemployment insurance benefits. *Id.*

Claimant had multiple violations of the employer's safety policy during his employment, including two such incidents in two days at the end of his employment, despite warnings that he needed to be vigilant and careful in the course of his work. Claimant's conduct arguably endangered his own safety as well as the safety of his coworkers and caused damage to the employer's property. Despite warnings, claimant's conduct did not change. The employer has carried its burden of establishing that claimant's conduct constitutes disqualifying misconduct. Benefits are denied.

DECISION:

The August 10, 2022, (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

October 7, 2022
Decision Dated and Mailed

ar/mh

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:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
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:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
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 adquiera 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.