

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

BETHANY M MORIARTY
Claimant

APPEAL NO. 24A-UI-06982-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE UNIVERSITY OF IOWA
Employer

OC: 07/07/24
Claimant: Appellant (2)

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct
Iowa Admin. Code Rule 87124.32(8) – Current Act Requirement

STATEMENT OF THE CASE:

On August 5, 2024, Bethany Moriarty (claimant) filed a timely appeal from the July 24, 2024 (reference 01) decision that disqualified her for benefits and that held the employer's account would not be charged for benefits, based on the deputy's conclusion that Ms. Moriarty was discharged on June 21, 2024 for theft of company property. After due notice was issued, the appeal hearing commenced on August 19, 2024 and concluded on August 21, 2024. Ms. Moriarty participated personally and was represented by attorney Joseph Basque. Scott Coons represented the employer and presented additional testimony through Tess Keeney. Exhibits 1, 2, 3 and A were received into evidence. The administrative law judge took official notice of the employer's Employee as Patient Parking policy set forth at transportation.uiowa.edu/employee-patient-parking and of the employer's cash handling policy set forth at afr.fo.uiowa.edu/cash-handlling/cash-handling-deposits-policies-and-procedures.

ISSUES:

Whether the claimant was discharged for misconduct in connection with the employment.
Whether the discharge was based on a current act of misconduct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Bethany Moriarty was employed by The University of Iowa as a full-time Administrative Services Coordinator/Reading Room Coordinator in the Radiology Department of the University of Iowa Health Care Medical Center. Ms. Moriarty began the employment in 2019 and last performed work for the employer on June 25, 2024. Ms. Moriarty's work hours were 8:00 a.m. to 4:30 p.m., Monday through Friday.

On June 25, 2024, the employer discharged Ms. Moriarty from the employment for repeated violation of the University's parking rules. The Medical Center has four parking ramps adjacent to and across the street from the Medical Center. Ramps 1, 2 and 4 are restricted for use by

hospital patients and their visitors during the hours of 8:00 a.m. to 4:30 p.m. Ramp 3 is available to authorized employees to use for a \$20.00 daily fee. Ms. Moriarty was at all relevant times aware of the University's parking rules.

On May 6, 2024, Tess Keeney, Human Resources Manager for the Radiology Department, and Kim Wiley, Imaging Services Manager, met with Ms. Moriarty to address Ms. Moriarty's repeated violation of University parking rules. The University parking authority periodically notifies department management of employee parking violations and had notified Ms. Keeney of Ms. Moriarty's parking violations. On several occasions in February and March 2024, Ms. Moriarty knowingly and intentionally violated the University's parking rules by parking in ramps restricted to patients at times when she was not attending a medical appointment. In connection with some of the violations, Ms. Moriarty made unauthorized use of a patient parking pass to exit the parking ramp without paying the ramp parking fee. In those instances when the University parking authority discovered Ms. Moriarty's unauthorized use of the patient parking ramps, the parking authority issued a \$30.00 parking violation citation that the University deducted from Ms. Moriarty's pay. Ms. Moriarty elected to repeatedly violate the ramp parking rules despite being aware she would be assessed the \$30.00 citation if caught. In the event that Ms. Moriarty paid the \$20.00 daily parking fee, the University would still assess the \$30.00 employee citation if it discovered Ms. Moriarty's unauthorized use of the patient parking ramp.

Ms. Moriarty has chronic mobility issues caused by hip dysplasia. Ms. Moriarty has pins in her hips and anticipates undergoing hip replacement in the foreseeable future. Ms. Moriarty sometimes experiences pain when walking. During the latter half of 2023, Ms. Moriarty broke her foot. In connection with the broken foot and exacerbated hip issues, Ms. Moriarty sent a couple email messages to the University parking office requesting a parking accommodation. When the emails did not prompt a response, Ms. Moriarty did not further pursue a parking accommodation. Ms. Moriarty did not apply for a reasonable accommodation pursuant to the Americans with Disabilities Act (ADA). Ms. Moriarty has not sought an Iowa Department of Transportation handicapped parking authorization.

During the May 6, 2024 meeting, the employer discussed Ms. Moriarty's parking violations but did not mention discipline for the conduct. After the meeting, Ms. Keeney conferred with University Employee Relations personnel, who recommended education/informal counseling rather than formal discipline. Ms. Keeney sought and obtained permission to proceed with a written warning.

On June 3, 2024, Ms. Keeney delivered the written warning to Ms. Moriarty. The written discipline included a warning that "Continued failure to meet expectations or comply with any rule or policy may result in further progressive discipline, up to and including termination of employment." The written discipline referred to the University parking policies. The written discipline also referred to a University Cash Handling Policy that did not apply to Ms. Moriarty and about which Ms. Moriarty had no knowledge and received no training. The employer would later use the Cash Handling Policy to assert Ms. Keeney's unauthorized use of the ramp amounted to theft from the employer. Prior to receiving the written discipline on June 3, 2024, Ms. Moriarty was unaware that violating the parking rules could lead to discharge from the employment.

On June 6, 2024, Ms. Keeney learned from the University parking authority of two additional alleged parking violations on May 28 and May 30, 2024. Ms. Moriarty may have had a medical appointment on May 28. Ms. Moriarty did not have a medical appointment on May 30 and elected to violate the parking policy that day because she was running late. The weight of the

evidence indicates that Ms. Moriarty made unauthorized use of a patient parking voucher on May 30.

On June 10, 2024, Ms. Keeney and Ms. Wiley met with Ms. Moriarty to discuss the May 28 and May 30 parking incidents. On that day, Ms. Keeney contacted University Employee Relations. On June 18, 2024, Ms. Keeney received approval from University Employee Relations to proceed with discharging Ms. Moriarty from the employment. On June 20, 2024, Ms. Keeney again contacted University Employee Relations. On June 24, 2024, University Employee Relations responded. On June 25, 2024, Ms. Keeney met with Ms. Moriarty to discharge her from the employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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:

...

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...

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

...

See also Iowa Admin. Code r. 871-24.32(1)(a) (duplicating the text of the statute).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). 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).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See Iowa Admin. Code r. 87124.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the

administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

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. See Iowa Administrative Code rule 87124.32(4).

Ms. Moriarty was discharged for no disqualifying reason. The evidence in the record establishes a discharge that was not based on a current act. The employer became aware of the May 28 and May 30 parking incidents on June 6, 2024. The employer unreasonably waited 19 days, until June 25, 2024, to notify Ms. Moriarty that one or both of the incidents could or would trigger her discharge from the employment. Because the discharge was not based on a current act, the discharge does not disqualify Ms. Moriarty for unemployment insurance benefits. Because the discharge was not based on a current act, the administrative law judge need not further consider whether the conduct in question was misconduct in connection with the employment. Ms. Moriarty is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits.

DECISION:

The July 24, 2024 (reference 01) decision is REVERSED. The June 25, 2024 discharge was not based on a current act and, therefore, does not disqualify the claimant for unemployment insurance benefits. The claimant is eligible for benefits, provided the claimant is otherwise eligible. The employer's account may be charged for benefits.



James E. Timberland
Administrative Law Judge

August 29, 2024
Decision Dated and Mailed

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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
6200 Park Ave 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>.

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
6200 Park Ave 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 está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.