

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

JOSEPH S COOMBS
Claimant

HY-VEE INC
Employer

APPEAL 24A-UI-03643-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/17/24
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Hy-Vee Inc, the employer/appellant,¹ appealed the Iowa Workforce Development (IWD) March 29, 2024 (reference 01) unemployment insurance (UI) decision. IWD found Mr. Coombs eligible for REGULAR (state) UI benefits because IWD concluded the employer dismissed him from employment on February 16, 2024 for a reason that did not disqualify him from receiving UI benefits. On April 10, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to the employer and Mr. Coombs for a telephone hearing scheduled for April 23, 2024.

The administrative law judge held a telephone hearing on April 23, 2024. The employer participated in the hearing through Jeremy Daeo, store manager, Thomas Griffin, assistant manager, store operations, and Kathleen Travers, Corporate Cost Control hearing representative. Mr. Coombs participated in the hearing personally. The administrative law judge took official notice of the administrative record and admitted Employer's Exhibit 1 as evidence.

The administrative law judge concludes Mr. Coombs is eligible for UI benefits because the employer has not established that the most recent incident leading the employer to discharge Mr. Coombs was an act of misconduct.

ISSUES:

Did the employer discharge Mr. Coombs from employment for disqualifying job-related misconduct?

Did IWD overpay Mr. Coombs UI benefits?

If so, should he repay the benefits?

¹ Appellant is the person or employer who appealed.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Coombs began working for the employer on March 25, 2021. He worked as a part-time service manager in Forest City. His employment ended on February 15, 2024.

On February 15, Mr. Coombs attended work. Mr. Daeo concluded that Mr. Coombs did not look presentable in that he looked like he just rolled out of bed and his reaction time was slow. The employer concluded that Mr. Coombs overall work performance did not meet the employer's expectations and his behavior was unbecoming an employee of the employer. The employer terminated Mr. Coombs' employment that day.

The employer had spoken with Mr. Coombs on June 28, 2023, about allegations that he may be under the influence of alcohol at work. On October 4, the employer gave Mr. Coombs a written warning for poor work performance and because customers and other employees complained to the employer that Mr. Coombs smelled of alcohol. On December 24, the employer spoke with Mr. Coombs about allegations that he may be under the influence of alcohol at work. On February 5, 2024 the employer gave Mr. Coombs a final written warning for a attendance issues. On February 9, the employer sent Mr. Coombs home because customers and other employees complained to the employer that Mr. Coombs smelled of alcohol, his speech was slurred, and he was not coherent. Mr. Daeo observed that Mr. Coombs smelled of alcohol, his hair was messy, he was unshaven, and he was dressed sloppily.

At some point, Mr. Coombs told the employer that the prescription medicines he took could slow his reaction time. Mr. Coombs told the employer that he would be willing to take a drug test. The employer never tested Mr. Coombs for alcohol use because Mr. Daeo's understanding is that an employer cannot require an employee to be drug tested unless the employee is involved in an accident.

The employer's policy prohibits alcohol use. The health and personal hygiene policy provides, in relevant part, that employees are to arrive at work clean, maintain clean fingernails, and keep facial hair neat and trimmed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged Mr. Coombs from employment on February 15, 2024 for a reason that does not disqualify him from receiving UI benefits.

Iowa Code section 96.5(2)(a) and (d) provide, in relevant part:

An individual shall be disqualified for benefits:

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 individual shall be disqualified for benefits 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.

The employer has the burden of proof in establishing disqualifying job misconduct.² The issue is not whether the employer made a correct decision in separating the claimant from employment, but whether the claimant is entitled to unemployment insurance benefits.³ Misconduct must be "substantial" to warrant a denial of job insurance benefits.⁴

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. A determination as to whether an employee's act is misconduct does not rest solely on the interpretation or application of the employer's policy or rule. A violation of the employer's policy or rule is not necessarily disqualifying misconduct even if the employer was fully within its rights to impose discipline up to or including discharge for the incident under its policy.

The most recent incident leading the employer to discharge Mr. Coombs must be a current act of misconduct to disqualify him from receiving UI benefits. The most recent act for which the employer terminated Mr. Coombs' employment was because on February 15 Mr. Daeo concluded that Mr. Coombs did not look presentable, and his reaction time was slow. The employer did not provide specifics of how Mr. Coombs' appearance that day violated the employer's policy. The employer must establish that the final incident was misconduct. The employer has not done so. So, Mr. Coombs is eligible for UI benefits, as long as no other decision denies him UI benefits.

Since Mr. Coombs is eligible for REGULAR (state) UI benefits per this decision, the issues of overpayment and repayment are moot. An issue being moot means there is nothing left to decide.⁵

² *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

³ *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

⁴ *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

⁵ *Iowa Bankers Ass'n v. Iowa Credit Union Dep't*, 335 N.W.2d 439, 442 (Iowa 1983).

DECISION:

The March 29, 2024 (reference 01) UI decision is AFFIRMED. The employer discharged Mr. Coombs from employment on February 15, 2024 for a reason that does not disqualify him from receiving UI benefits. Mr. Coombs is eligible for UI benefits, as long as no other decision denies him UI benefits.



Daniel Zeno
Administrative Law Judge

April 30, 2024
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with this 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 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:

**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 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.