

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

ZACHARY P BALLSTAEDT
Claimant

HEARTLAND PAVERS LLC
Employer

APPEAL NO. 22A-UI-18799-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/02/22
Claimant: Respondent (2)**

Iowa Code Section 96.5(2)(a) & (d) – Discharge for Misconduct

STATEMENT OF THE CASE:

On November 10, Heartland Pavers, L.L.C. (employer) filed a timely appeal from the November 7, 2022 (reference 02) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on October 6, 2022 for no disqualifying reason. After due notice was issued, a hearing was held on November 28, 2022. Zachary Ballstaedt (claimant) participated. Troy Zaruba represented the employer and presented additional testimony through Dustin Mauck. The hearing in this matter was consolidated with the hearing in Appeal Number 22A-UI-18569-JT-T. Exhibits 1 and 2, the two online appeals, were received into evidence. The administrative law judge took official notice of the following Iowa Workforce Development records: DBRO, KCCO and WAGE-A. The administrative law judge also took official notice of the business entity search records for Iowa Concrete, L.L.C. and Heartland Pavers, L.L.C., which records are available to the public at the Iowa Secretary of State website, <https://sos.iowa.gov>.

ISSUE:

Whether the claimant was discharged for misconduct in connection with the employment.

FINDINGS OF FACT:

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

Iowa Concrete, L.L.C. and Heartland Pavers, L.L.C. are sister companies owned and operated by Troy Zaruba and Michael Accola. Iowa Concrete, L.L.C. is a construction contracting business. Heartland Pavers employs the employees who perform work on Iowa Concrete construction projects. Heartland Pavers handles all aspects of payroll and issues payment to employees. Heartland Pavers has an employer account with Iowa Workforce Development and reported the claimant's quarterly wages to IWD. Iowa Concrete, L.L.C. did not make quarterly wages reports to IWD regarding the claimant. Only Heartland Pavers appears in the IWD records as a base period employer. Only Heartland Pavers appeared on the monetary record IWD mailed to the claimant when he established his unemployment insurance claim.

Zachary Ballstaedt (claimant) was employed by Heartland Pavers, L.L.C. as a full-time, salaried foreman until October 6, 2022, when the employer discharged him from the employment for unauthorized use of an employer-issued credit card. The claimant began his employment in 2011 and worked in the foreman position several years prior to the discharge. When the claimant became a foreman, the company owners issued a company credit card to the claimant for uses directly related to the employer's business operations. The employer made the claimant aware of written work rules, standard operating procedures, that outlined acceptable and unacceptable use of the employer-issued credit card. The claimant was at all relevant times aware of the policy concerning acceptable use of the company credit card.

Toward the end of the employment, the claimant, an Iowa native, was assigned to a construction site in Georgia. At all relevant times, the employer provided the claimant with a \$55.00 per diem payment to cover the claimant's meal expenses. Until July 7, 2022, the employer also paid for the claimant's hotel lodging, for which the hotel billed the employer directly. The employer never decided to discontinue paying for the claimant's hotel lodging and never communicated such a decision to the claimant. Rather, on or about July 7, 2022, the claimant voluntarily ceased using the hotel room provided by the employer and began lodging in a camper the claimant purchased at significant cost. The claimant purchased and began using the camper as a matter of personal comfort and convenience. The claimant had grown tired of lodging in hotel rooms. The claimant desired to do more of his own cooking and desired to have more of his possessions with him while he worked away from his permanent home for extended periods. The claimant requested permission to use the employer's truck to tow the trailer and the employer approved the request. The employer paid the campsite fee.

At about the time the claimant began using the camper, the claimant asked the owners to provide additional compensation to him. The claimant reasoned that the employer was saving money due to no longer needing to provide the claimant with a hotel room. The claimant desired to have the employer compensate him for a portion of the camper purchase price. The employer had not asked the claimant to purchase the camper. The owners agreed to consider the request. The owners wished to confer with the company's insurance carrier and with the company's attorney before establishing a relevant policy. The employer agreed to continue the discussion with the claimant. Toward the beginning of October 2022, the owners visited the Georgia job site and told the claimant a decision regarding the claimant's request would be made within the next several days. As of October 5, 2022, the employer had not yet provided a response to the claimant's request for additional compensation.

On October 5, 2022, the claimant told Project Manager Jason Betts and Jenna Dains, payroll and logistics representative, that he was going to make a charge to the company credit card for his camper expense. Though the claimant's discussion regarding reimbursement for the cost of the camper had up to that time been with the owners, the claimant did not contact the owners prior to making the charge to the employer-issued credit card. Because neither Mr. Betts nor Ms. Dains had been part of the previous discussion neither understood Mr. Ballstaedt's intention. On October 5, 2022, Mr. Ballstaedt made a \$9,020.00 unauthorized charge to the employer-issued credit card. The claimant had established an Limited Liability Company (L.L.C.) solely related to the camper expense. The charge the claimant made to the employer-issued credit card was for payment to the claimant's L.L.C. Owner Troy Zaruba learned of the charge when the company's bank's fraud department contacted to ask whether he authorized the charge and payment. Mr. Zaruba told the bank the employer did not authorize the charge and declined the charge. Mr. Zaruba then contacted the claimant for an explanation of the unauthorized charge. On the next day, the owners notified the claimant he was discharged from the employment.

The claimant established an original claim for benefits that Iowa Workforce Development deemed effective October 2, 2022. The claimant made no weekly claims in connection with the original claim and received not benefits in connection with the claim.

REASONING AND CONCLUSIONS OF LAW:

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.

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). The Legislature recently codified the misconduct definition along with a non-exhaustive list of types of disqualifying misconduct. See Iowa Code section 96.5(2)(d). The list includes "Knowing violation of a reasonable and uniformly enforced rule of an employer" and "Theft of an employer or coworker's funds or property. See Iowa Code section 96.5(2)(d)(2) and (13).

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.871 -24.32(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 871 IAC 24.32(4).

The evidence in the record establishes the claimant was discharged on October 6, 2022 for misconduct in connection with the employer. The claimant was discharged for making a \$9,020.00 unauthorized charge to employer-issued credit card in payment to the claimant's Limited Liability Company. The claimant knew at the time he made the charge that the business owners would need to approve the charge and that the business owners had not approved the charge. The claimant's unauthorized, self-dealing transaction was a knowing violation of the employer's reasonable and uniformly enforced credit card use rules. The claimant's conduct amount to attempted theft of \$9,020.00 from the employer. The claimant's act demonstrated a willful and wanton disregard for the employer's interests. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.

Because the claimant received no benefits in connection with the claim, there is no overpayment to address.

DECISION:

The November 7, 2022 (reference 02) decision is REVERSED. The claimant was discharged on October 6, 2022 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The employer's account shall not be charged.



James E. Timberland
Administrative Law Judge

December 1, 2022
Decision Dated and Mailed

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>.

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 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.