

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

LISA G VANDESTOUWE
Claimant

APPEAL 22A-UI-18052-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ATLAS GROUP OF LYON COUNTY
Employer

**OC: 09/11/22
Claimant: Respondent (2)**

Iowa Code § 96.5(2)a – Discharge for Misconduct
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment
Iowa Admin. Code r. 871-24.10 – Employer Participation in Fact-Finding Interview

STATEMENT OF THE CASE:

Atlas Group of Lyon County, the employer/appellant, filed an appeal from the Iowa Workforce Development's (IWD) October 6, 2022, (reference 03) unemployment insurance (UI) decision. The decision allowed REGULAR (state) UI benefits because IWD concluded that the employer had dismissed Ms. VandeStouwe from work on August 18, 2022 for a non-disqualifying reason. The parties were properly notified of the hearing. A telephone hearing was held on November 7, 2022. The employer participated through Rick Attig, board president. Ms. VandeStouwe participated personally. The administrative law judge took official notice of the administrative record. The administrative law judge admitted Employer's Exhibit 1 as evidence.

ISSUES:

Did the employer discharge Ms. VandeStouwe from employment for disqualifying job-related misconduct?
Was Ms. VandeStouwe overpaid benefits?
If so, should she repay the benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. VandeStouwe began working for the employer in 2012. She worked as a full-time executive director. Her employment ended on August 18, 2022.

On July 1, the Board of Directors met with Ms. Vandestouwe about several issues. The Board directed Ms. Vandestouwe to remove personal items that she had been storing in the employer's basement, not get into the employer's retail store and/or buy things from the employer's retail store while she was working, and not share disagreements between her and the Board with other employees. The Board had directed Ms. Vandestouwe to terminate the employment of an employee. Ms. Vandestouwe disagreed with the Board's decision, so she had told the employee that their job was over "because of the Board." The employer gave Ms. Vandestouwe one month to address these issues.

On August 1, the Board met with Ms. Vandestouwe again. Ms. Vandestouwe had removed some but not all of her personal items from the employer's basement. Ms. Vandestouwe told the employer that she planned to donate the remaining items in the employer's basement to the employer. But Ms. Vandestouwe did not put the items in the employer's donation box; instead, she stored them in the employer's basement. Ms. Vandestouwe continued to go into the retail store often. Ms. Vandestouwe explained that she felt that she needed to be in the retail store often because the employer had not filled the store manager position. The retail store manager position had been open since May 2022. Ms. Vandestouwe had ended the employment of another employee, at the Board's direction. Ms. Vandestouwe disagreed with the Board's decision, so she told the employee that their job was over "because of the Board." Ms. Vandestouwe also told the store clerks that they would need to ask the Board to let the former employee come back to work. The Board concluded that Ms. Vandestouwe did not address the issues the Board had raised with her the previous month. The Board put Ms. Vandestouwe on unpaid leave as of August 1.

The employer investigated more and learned that in March 2022 Ms. Vandestouwe had signed another person's name to obtain the employer's food training certification. The employer runs a food pantry and must obtain a food certificate every three years. To obtain the certificate, an employee must complete an online training class and pass a test. The employee (Employee A) who had obtained the certificate the previous time no longer worked for the employer. Ms. Vandestouwe logged in using Employee A's username and password, completed the training, passed the test, and obtained the certificate. The certificate showed Employee A's name and not Ms. Vandestouwe's name. Ms. Vandestouwe called the association that produced the certificate and asked how she could get her name on the certificate. The association told Ms. Vandestouwe that it would send her a correction form for her to complete to best of her ability. Ms. Vandestouwe received the correction form, printed and signed Employee A's name, printed and signed her own name, and sent the form back to the association. Ms. Vandestouwe did not ask for and did not receive Employee A's permission to sign Employee A's name. The employer contacted Employee A and asked if Ms. Vandestouwe had permission to sign their name to the correction form. Employee A told the employer that they had no knowledge that Ms. Vandestouwe had signed their name. In early August, the employer asked Ms. Vandestouwe if she had Employee A's permission to sign Employee A's name to the correction form. Ms. Vandestouwe admitted that she had not. After the Board raised the issue with her, Ms. Vandestouwe contacted Employee A. Ms. Vandestouwe testified in the appeal hearing that Employee A told her that Employee A understood why Ms. Vandestouwe had signed their name but it would have been better if Ms. Vandestouwe had contacted Employee A beforehand. The employer reported the incident to police.

The Board also learned from its investigation that Ms. Vandestouwe had purchased air fresheners and candles and called them office supplies. Ms. Vandestouwe testified in the appeal hearing that she bought the air freshener and candles to counter the smell of some of the customers, so they were office supplies. The Board concluded that the air fresheners and candles were not office supplies and an inappropriate use of the employer's money. On August 18, the Board met with Ms. Vandestouwe and terminated her employment for signing Employee A's name on the correction form without Employee A's permission, inappropriate use of the employer's money, and not following the Board's directives.

Ms. Vandestouwe has received \$4,408.00 in REGULAR (state) UI benefits between September 11, 2022 and November 5, 2022. The employer participated in the fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged Ms. Vandestouwe from employment for job-related misconduct.

Iowa Code section 96.5(2)(a) and (d) provide:

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 such 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.

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.

The Iowa Supreme Court has held that this definition accurately reflects the intent of the legislature. *Huntoon v. Iowa Department of Job Service*, 275 N.W.2d 445, 448 (Iowa 1979).

The employer has the burden of proof in establishing disqualifying job 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 from employment, 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). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

The employer is entitled to establish reasonable work rules and expect employees to abide by them. The employer has presented credible evidence that Ms. Vandestouwe did not follow the Board's direction after having been warned. Ms. Vandestouwe did remove her personal items from the employer's basement, and she did not actually donate them. Ms. Vandestouwe continued to express her disagreement with the Board to employees, and she signed another person's name without permission. The employer has established disqualifying, job-related misconduct. Therefore, benefits are denied.

The administrative law judge further concludes Ms. Vandestouwe has been overpaid REGULAR (state) UI benefits in the gross amount of \$4,408.00.

Iowa Code §96.3(7) provides, in pertinent part:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) (a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

Iowa Admin. Code r. 871-24.10 provides:

Employer and employer representative participation in fact-finding interviews.

(1) "Participate," as the term is used for employers in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means submitting detailed factual information of the quantity and quality that if unrebutted would be sufficient to result in a decision favorable to the employer. The most effective means to participate is to provide live testimony

at the interview from a witness with firsthand knowledge of the events leading to the separation. If no live testimony is provided, the employer must provide the name and telephone number of an employee with firsthand information who may be contacted, if necessary, for rebuttal. A party may also participate by providing detailed written statements or documents that provide detailed factual information of the events leading to separation. At a minimum, the information provided by the employer or the employer's representative must identify the dates and particular circumstances of the incident or incidents, including, in the case of discharge, the act or omissions of the claimant or, in the event of a voluntary separation, the stated reason for the quit. The specific rule or policy must be submitted if the claimant was discharged for violating such rule or policy. In the case of discharge for attendance violations, the information must include the circumstances of all incidents the employer or the employer's representative contends meet the definition of unexcused absences as set forth in 871—subrule 24.32(7). On the other hand, written or oral statements or general conclusions without supporting detailed factual information and information submitted after the fact-finding decision has been issued are not considered participation within the meaning of the statute.

(2) "A continuous pattern of nonparticipation in the initial determination to award benefits," pursuant to Iowa Code section 96.6, subsection 2, as the term is used for an entity representing employers, means on 25 or more occasions in a calendar quarter beginning with the first calendar quarter of 2009, the entity files appeals after failing to participate. Appeals filed but withdrawn before the day of the contested case hearing will not be considered in determining if a continuous pattern of nonparticipation exists. The division administrator shall notify the employer's representative in writing after each such appeal.

(3) If the division administrator finds that an entity representing employers as defined in Iowa Code section 96.6, subsection 2, has engaged in a continuous pattern of nonparticipation, the division administrator shall suspend said representative for a period of up to six months on the first occasion, up to one year on the second occasion and up to ten years on the third or subsequent occasion. Suspension by the division administrator constitutes final agency action and may be appealed pursuant to Iowa Code section 17A.19.

(4) "Fraud or willful misrepresentation by the individual," as the term is used for claimants in the context of the initial determination to award benefits pursuant to Iowa Code section 96.6, subsection 2, means providing knowingly false statements or knowingly false denials of material facts for the purpose of obtaining unemployment insurance benefits. Statements or denials may be either oral or written by the claimant. Inadvertent misstatements or mistakes made in good faith are not considered fraud or willful misrepresentation.

This rule is intended to implement Iowa Code section 96.3(7)"b" as amended by 2008 Iowa Acts, Senate File 2160.

Ms. Vandestouwe has been overpaid REGULAR (state) UI benefits in the gross amount of \$4,408.00 because she is not qualified to receive these benefits. Since the employer participated in the fact-finding interview, Ms. Vandestouwe should repay these benefits.

DECISION:

The October 6, 2022, (reference 03) UI decision is REVERSED. The employer discharged Ms. Vandestouwe from employment for job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.

Ms. Vandestouwe has been overpaid REGULAR (state) UI benefits in the gross amount of \$4,408.00. Since the employer participated in the fact-finding interview, Ms. Vandestouwe is required to repay these benefits.



Daniel Zeno
Administrative Law Judge

November 17, 2022
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
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.