

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

MARIETTE L LEONARD
Claimant

EXPRESS SERVICES INC
Employer

APPEAL 24A-UI-02541-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/21/24
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Mariette L Leonard, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) February 27, 2024 (reference 02) unemployment insurance (UI) decision. IWD denied Ms. Leonard REGULAR (state) UI benefits because IWD concluded the employer discharged her from employment on December 7, 2023 for violating a known company rule. On March 8, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Ms. Leonard and the employer for a telephone hearing scheduled for March 28, 2024.

The administrative law judge held a telephone hearing on March 28, 2024. Ms. Leonard participated in the hearing personally. The employer participated through Cailee Hayes, office manager. The administrative law judge admitted Claimant's Exhibits A-B, and Employer's Exhibit 1 as evidence.

ISSUE:

Did the employer discharge Ms. Leonard from employment for disqualifying, job-related misconduct?

FINDINGS OF FACT:

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue.² The administrative law judge may believe all, part or none of any witness's testimony.³ In assessing the credibility of witnesses, the administrative law judge should consider the evidence using their own observations, common sense and experience.⁴ In determining the facts, and deciding what testimony to believe, the administrative law judge may consider the following factors: whether the testimony is

¹ Claimant is the person who applied for UI benefits. Appellant is the person or employer who appealed.

² *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007).

³ *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996).

⁴ *Id.*

reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's conduct, age, intelligence, memory and knowledge of the facts; the witness's interest in the trial, and the witness's motive, candor, bias and prejudice.⁵

The following findings of fact show how the administrative law judge has resolved the disputed factual issues in this case. The administrative law judge assessed the credibility of the witnesses, considered the applicable factors listed above, and used his common sense and experience.

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Leonard began working for the employer on July 5, 2023. She worked as a full-time office administrator assigned to work at the City of Cedar Rapids, City Services Center. Her employment ended on December 7, 2023.

On December 7, Ms. Leonard called the employer and reported that she would attend work about one hour late because she wasn't feeling well. Ms. Leonard had called in on December 4 and 5 due to illness. The employer had given Ms. Leonard a verbal warning for attendance issues in October or November. Ms. Hayes concluded that Ms. Leonard needed a final warning because of her December 4, 5 and 7 call-ins.

Ms. Hayes called Ms. Leonard. Ms. Hayes gave Ms. Leonard a final warning for attendance issues. Ms. Leonard told Ms. Hayes that she was over it and that Ms. Hayes could take the job and "shove it up your ass." Ms. Hayes told Ms. Leonard that her job was over due to Ms. Leonard's attendance issues, and the way Ms. Leonard spoke to Ms. Hayes.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer discharged Ms. Leonard from employment on December 7, 2023 for disqualifying, job-related misconduct

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

⁵ *Id.*

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.⁶ 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.⁷ Misconduct must be “substantial” to warrant a denial of job insurance benefits.⁸

The use of profanity or offensive language in a confrontational, disrespectful, or name-calling context may be recognized as misconduct, even in the case of isolated incidents or situations in which the target of abusive name-calling is not present when the vulgar statements are initially made.”⁹ However, the claimant’s use of one instance of profanity, when not used in front of customers, accompanied by threats or in a confrontational manner does not rise to the level of misconduct.¹⁰ The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this case, Ms. Leonard’s testimony about the December 7 call was less than forthcoming. She left out details, and she initially testified that she could not say anything on the call and then later admitted making statements that Ms. Hayes said she made on the call. Ms. Leonard also paused before she answered the administrative law judge’s questions about whether she used the language Ms. Hayes alleged she had used, or whether she used any profanity on the December 7 call. The administrative law judge concludes that Ms. Leonard’s testimony about the December 7 call was not credible.

Ms. Hayes, on the other hand, credibly and consistently testified that Ms. Leonard used profane and offensive language in a confrontational manner on the December 7 call. This is misconduct. The employer has established disqualifying, job-related misconduct, so Ms. Leonard is not eligible for UI benefits.

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

⁷ *Infante v. Iowa Dep’t of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

⁸ *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

⁹ *Myers v. Emp’t Appeal Bd.*, 462 N.W.2d 734 (Iowa Ct. App. 1990).

¹⁰ See *Nolan v. Emp’t Appeal Bd.*, 797 N.W.2d 623 (Iowa Ct. App. 2011), distinguishing *Myers* (Mansfield, J., dissenting) (finding the matter to be an issue of fact “entrusted to the agency.”).

DECISION:

The February 27, 2024 (reference 02) UI decision is AFFIRMED. The employer discharged Ms. Leonard from employment on December 7, 2023 for disqualifying, job-related misconduct. Ms. Leonard is not eligible for UI benefits until she has worked in and been paid wages for insured work equal to ten times her weekly UI benefit amount, as long as no other decision denies her UI benefits.



Daniel Zeno
Administrative Law Judge

April 1, 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 Avenue Suite 100
Des Moines IA 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 IA 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.