

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

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**JESSICA R JAGER**  
Claimant

**FAMILY RESOURCES INC**  
Employer

**APPEAL 22A-UI-14714-SN-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/05/22**  
**Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Admin. Code r. 871-24.32(1)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer, Family Resources Inc., filed an appeal from the June 22, 2022, (reference 01) unemployment insurance decision that granted benefits based upon the conclusion the claimant was discharged for non-disqualifying conduct. The parties were properly notified of the hearing. A telephone hearing was scheduled to be held on August 12, 2022. The administrative law judge postponed the hearing due to issues with the hearing control panel.

A new hearing was scheduled for September 8, 2022. The hearing was conducted on that date. The claimant participated and testified. The employer participated through Payroll and Benefits Specialist Julieta Valencia. Exhibits 1, 2, and 3 were received into the record.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?

Whether the claimant was overpaid benefits? Whether the claimant is excused from repaying benefits due to the employer's non-participation at factfinding?

**FINDINGS OF FACT:**

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

The claimant worked for the employer as a human resources generalist from January 18, 2022 until she was separated from employment on June 6, 2022, when she was terminated. The claimant reported directly to Human Resources Director Mindy Lawler.

The employer lists out various job duties a human resources generalist must perform in their role in the job description for the position. One of those duties is completing 1-9 forms for new hires. The employer also has a checklist to assist human resources generalists in completing this task correctly. However, the claimant was trained incorrectly regarding the completion of these tasks by a coworker. The claimant also does not remember seeing the checklist prior to

Ms. Lawler speaking to her about it. Specifically, the claimant was told to copy of the documents and merely place them in the employee's file.

On June 2, 2022, Ms. Lawler informed the claimant that she had not completed four new hire employees' 1-9 paperwork according to the employer's requirements. Ms. Lawler gave the claimant until noon on June 3, 2022 to complete the paperwork and to write a letter explaining why the requirement was not met earlier. Ms. Lawler did not explain how this letter should be written to the claimant. The claimant had never written such a letter in the past. Payroll and Benefits Specialist Julieta Valencia explained that the letter is needed to explain to an auditing agency why the employer is not in compliance. Otherwise, fines could be imposed on the employer until it is brought back into compliance.

On June 2, 2022, the claimant called all four new hires and sent them the I-9 checklist by email as instructed later that day. Only one new hire responded to the email and provided the requisite information by June 6, 2022.

On June 6, 2022, the claimant informed Ms. Lawler that she and her son were ill. The claimant said she could work from home if needed. Ms. Lawler approved the claimant's request to work from home. Ms. Lawler asked the claimant if she had completed the requisite I-9 paperwork for four employees that had not yet been completed. The claimant replied she had "reached out to staff about the checklist" and said she completed her part of it, but she was waiting to hear back from three of the four new hires regarding what they needed to complete. The claimant said she was going to write the explanatory letter to the auditing agency that morning. The claimant added that June 2, 2022 had been "rough" because she had to complete a personnel action form ("PAF"), in addition to these other tasks. Ms. Lawler reminded the claimant that she was told to finish the letter by noon on June 3, 2020.

On June 6, 2022, Ms. Lawler terminated the claimant's employment. The termination notice states the claimant was terminated because she had not yet reviewed the 1-9 requirements or completed the written reason for non-compliance on company letterhead by June 3, 2022. The termination notice then characterizes the claimant's behavior as insubordination because she completed other assigned duties that were not time sensitive. The employer provided a copy of the termination notice. (Exhibit 1) The claimant was shocked when she received the termination notice. Ms. Lawler had not signaled her job was in jeopardy.

The following section describes the findings of facts necessary to resolve the participation issue:

The claimant received \$2,261.00 in regular unemployment insurance benefits from June 18, 2022 through August 6, 2022.

Iowa Workforce Development Department sent a notice of fact finding to the parties on June 13, 2022 informing the parties of an interview on June 20, 2022 at 3:20 p.m. The claimant participated personally. The employer did not participate.

On June 22, 2022, the employer sent an email to the Benefits Bureau requesting to reschedule the interview because June 20, 2022 was the Juneteenth National Independence Day holiday. The employer's agent was informed the factfinding could not be rescheduled.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the employer has not met its burden to show the claimant engaged in work-related misconduct. The overpayment issue is moot because benefits are granted.

Iowa Code section 96.5(2)a provides:

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.

871 IAC 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 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 claimant, 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). The Iowa Court of Appeals found substantial evidence of misconduct in testimony that the claimant worked slower than he was capable of working and would temporarily and briefly improve following oral reprimands. *Sellers v. Emp't Appeal Bd.*, 531 N.W.2d 645 (Iowa Ct. App. 1995). Generally, continued refusal to follow reasonable instructions constitutes misconduct. *Gilliam v. Atlantic Bottling Co.*, 453 N.W.2d 230 (Iowa Ct. App. 1990). 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). Poor work performance is not

misconduct in the absence of evidence of intent. *Miller v. Emp't Appeal Bd.*, 423 N.W.2d 211 (Iowa Ct. App. 1988).

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 in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds the claimant's version of events to be more credible than the employer's recollection of those events.

The administrative law judge finds the claimant was not informed about the I-9 checklist requirements until Ms. Lawler spoke with her on June 2, 2022. The claimant credibly alleged she was trained incorrectly by another coworker. While Ms. Valencia's testimony claims the claimant was trained regarding these requirements by Ms. Lawler, the administrative law judge finds the claimant's firsthand testimony regarding what she experienced more persuasive.

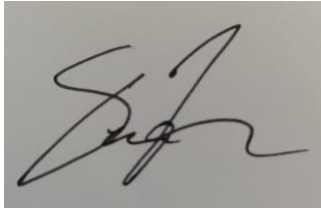
The administrative law judge finds the claimant's allegation that she did not know her job was jeopardy prior to receiving the termination notice as more credible than the employer's allegation that she had been given a written warning on June 2, 2022. The employer did not provide a written warning either as an exhibit or by reading it into the record. The termination notice does not reference the claimant being issued any warning.

Given these findings, the administrative law judge finds the claimant's behavior to not be disqualifying misconduct, but rather "failure in good performance as the result of inability or incapacity." The claimant had not been adequately trained regarding the checklist. The claimant worked through an illness contacting the new hires who had the deficiencies in their I-9 paperwork and completed the paperwork for the one that got back to her after being informed of the checklist requirements. The employer did not even attempt to explain how the claimant could have completed these tasks without the requisite information from these other new hires. The record establishes through the text messages the claimant provided that the claimant made several efforts to get this information.

It is true that the claimant had not yet completed the letter explaining to the auditing agency why the I-9 paperwork had not been completed. Similarly, the employer has not met its burden to show this was due to work-related misconduct because the claimant credibly states she had not idea how to complete this task. Benefits are granted, provided the claimant is otherwise eligible. The overpayment issue is moot because the claimant is entitled to benefits.

**DECISION:**

The June 22, 2022, (reference 01) unemployment insurance decision is AFFIRMED. The employer has not met its burden to show the claimant engaged in work-related misconduct. Benefits are granted, provided the claimant is otherwise eligible.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'S. Nelson'.

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Sean M. Nelson  
Administrative Law Judge II  
Iowa Department of Inspections & Appeals  
Administrative Hearings Division – UI Appeals Bureau

October 7, 2022  
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  
4<sup>th</sup> 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 adquiriera 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.