

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

ANNA M NICHOL
Claimant

PER MAR SECURITY & RESEARCH CORP
Employer

APPEAL 24A-UI-02256-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/23/23
Claimant: Respondent (1R)**

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Per Mar Security & Research Corp, the employer/appellant,¹ appealed the Iowa Workforce Development (IWD) February 16, 2024 (reference 03) unemployment insurance (UI) decision. IWD found Ms. Nichol eligible for REGULAR (state) UI benefits because IWD concluded the employer dismissed her from employment on September 22, 2023 for a reason that did not disqualify her from receiving UI benefits. On March 5, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to the employer and Ms. Nichol for a telephone hearing scheduled for March 22, 2024.

The administrative law judge held a telephone hearing on March 22, 2024. The employer participated in the hearing through Lance Sprouse, operations manager, Cedar Rapids, and Isabella Kogut, lead senior account representative at Valeu and the employer's hearing representative. Ms. Nichol did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUES:

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

Did IWD overpay Ms. Nichol UI benefits?

If so, should she repay the benefits?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Nichol began working for the employer on July 5, 2022. She worked as a full-time security officer until March 18, 2023. As of March 19, 2023, Ms. Nichol worked as a part-time security officer.

Between May 19, 2023 and July 4, 2023, Ms. Nichol worked one shift. Ms. Nichol went on maternity leave beginning July 5, 2023. Her maternity leave ended on, or about, September 12, 2023 when her doctor released her to return to work. Ms. Nichol told the employer that she

¹ Appellant is the person or employer who appealed.

could only work 6:00 p.m. – 10:00 p.m. on weekdays because she didn't have childcare for her baby, or she could work more hours if she could bring her baby to work. Ms. Nichol's worked a shift on September 22. Ms. Nichol declined a full-time assignment on September 26 and another full-time assignment on October 11 because they were outside the hours of 6:00 p.m. and 10:00 p.m.

The employer's internal human resources policy provides that the employer will deem an employee to have quit if the employee does not work or refuses work for 30 days or more. The employer did not give Ms. Nichol a copy of this policy or tell her about the policy.

On January 16, 2024, the employer terminated Ms. Nichol's employment because she had not worked for more than 30 days, and she declined the employer's September and October full-time offers.

IWD has not paid Ms. Nichol any REGULAR (state) UI benefits on her current UI claim. In its August 23, 2023 (reference 02) UI decision, IWD denied Ms. Nichol UI benefits from July 23, 2023 through September 30, 2023. IWD has not yet decided whether Ms. Nichol is able to and available for work as of October 1, 2023.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes 1) the employer discharged Ms. Nichol from employment on January 16, 2024 for a reason that does not disqualify her from receiving UI benefits, 2) IWD did not overpay Ms. Nichol any UI benefits, so 3) she does not have to repay any benefits back to IWD.

The Employer Has Not Established Disqualifying, Job-Related Misconduct on the Part of Ms. Nichol

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.

An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given. Training or general notice to staff about a policy is not considered a disciplinary warning. Inasmuch as employer had not previously warned claimant about the issue leading to the separation, it has not met the burden of proof to establish that claimant acted deliberately or with recurrent negligence in violation of company policy, procedure, or prior warning.

In this case, the employer ended Ms. Nichol’s job because she hadn’t worked for more than 30 days. The employer has not established disqualifying, job-related misconduct on the part of Ms. Nichol. So, Ms. Nichol is eligible for UI benefits based on how her job ended with this employer.

IWD Did Not Overpay Ms. Nichol Any UI Benefits
So, She is Not Required to Repay Any UI Benefits Back to IWD

Iowa Code §96.3(7) provides, in relevant 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.

IWD did not pay Ms. Nichol any UI benefits during her current benefit year. So, IWD did not overpay Ms. Nichol and she is not required to repay any benefits back to IWD.

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).

DECISION:

The February 16, 2024, (reference 03) UI decision is AFFIRMED. The employer discharged Ms. Nichol from employment on January 16, 2024 for a reason that does not disqualify her from receiving UI benefits. Ms. Nichol is eligible for UI benefits, as long as no other decision denies her UI benefits.

REMAND:

The issue of Ms. Nichol's ability to and availability for work as of October 1, 2023 is REMANDED (sent back) to the IWD Benefits Bureau for investigation and a decision.



Daniel Zeno
Administrative Law Judge

March 26, 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.