

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

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**PAUL M STRECKER**

Claimant

**IA DEPT OF TRANSPORTATION**

Employer

**APPEAL 22A-UI-14882-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/12/22**

**Claimant: Respondent (1)**

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Iowa Code § 96.5(2)a – Discharge from Employment  
Iowa Admin. Code r. 871-24.32(1)A – Misconduct  
Iowa Admin. Code r. 871-24.32(8) – Current Act of Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

On July 11, 2022, employer Iowa Department of Transportation filed an appeal from the July 1, 2022 (reference 01) unemployment insurance decision that allowed benefits after a June 14, 2022, separation from employment. The parties were properly notified of the hearing. A telephonic hearing was held at 1:00 p.m. on Wednesday, August 17, 2022. The claimant, Paul M. Strecker, participated. The employer, Iowa Department of Transportation, participated through witnesses Dana McKenna, Employee Relations Team Lead; and Dave Lorenzen, Division Director for Systems Operations; and was represented by Barbara Buss, Hearing Representative with Corporate Cost Control. Employer's Exhibit 1 was received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Was the claimant discharged for a current act of disqualifying misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for the Iowa Department of Transportation ("IDOT") on January 4, 2010. He was employed with IDOT as a full-time Motor Vehicle Officer until June 14, 2022, when he was discharged for violation of the employer's policies. These policies include the DOT Work Rules, governing topics including work performance, falsifying records, and giving false information; and the Motor Vehicle Enforcement ("MVE") policies, governing officer conduct and setting forth expectations for the Motor Vehicle Officer standards of conduct. Claimant acknowledged receipt and understanding of both the DOT Work Rules and the MVE Policies.

On January 6, 2022, claimant (along with Officer Wilson and Officer Jones) arrested an individual as part of their work for the IDOT. That same day, claimant sent in a written

complaint to the Buchanan County Attorney's office, as the arrest had taken place in Buchanan County.

Next, on January 13, claimant sent the Incident Report describing the details of the arrest to the Buchanan County Attorney's office. At the same time, claimant sent this Incident Report to his supervisor, and the supervisor provided feedback and asked claimant to make changes and improvements prior to sending it to the county attorney. Claimant did not disclose that he had already sent it into the county attorney. Instead, he simply revised the report and sent it back to his supervisor three days later. After the supervisor approved the report on January 16, claimant sent this second Incident Report back to the Buchanan County Attorney's office that day. Claimant did not identify this second Incident Report as a revised version of the January 13 report.

Numerous details changed between the Incident Report submitted on January 13 and the Incident Report submitted on January 16. In the January 13 Incident Report, claimant identified himself as performing all of the "law enforcement" actions, including conducting a pat-down search of the driver, conducting a search of the vehicle, and removing items from the driver's pockets. In the January 16 Incident Report, claimant was one of three officers performing "law enforcement" actions during the arrest. In this second report, he did not mention the pat-down search of the driver. He mentioned questioning the driver about possessing marijuana, which he did not mention in the first report. He stated Officer Wilson found the one-hitter during the vehicle search, which he previously stated he himself had found.

On January 17, 2022, the Buchanan County Attorney began looking into these discrepancies to determine whether they would ultimately impact claimant's ability to testify in court as a credible witness. He reached out to Captain Steele, and they met on January 20, 2022, to discuss the county attorney's concerns. Ultimately, on February 23, 2022, the Buchanan County Attorney determined he must open a Giglio file on the claimant. This would permanently affect claimant's credibility as a Motor Vehicle Officer in the courtroom.

After learning about the Giglio file, the IDOT checks with its internal legal department and determines it must conduct its own investigation into claimant's actions related to the January 6 arrest. McKenna and Lorenzen interview claimant on March 11, and on March 14, they suspend him pending the outcome of a full investigation. Claimant is informed on March 14 that this investigation could lead to his discharge from employment.

McKenna and Lorenzen conduct a full investigatory interview of the claimant on April 13, 2022. They also interview the other two officers involved with the January 6 arrest and the captain. When asked to explain the discrepancy between the two Incident Reports – and the failure to communicate forthrightly about the two reports – claimant stated it was simply "poor report-writing."

The disciplinary process was delayed, as claimant was supposed to go on military leave and McKenna and Lorenzen believed that he had, so they paused their investigation. McKenna and Lorenzen met with the claimant on June 14 and conducted a Loudermill meeting. During the meeting, claimant failed to provide any new, mitigating information regarding the events following the January 6 arrest. Therefore, claimant was discharged following that meeting.

The administrative record reflects that claimant has not received any unemployment since filing a claim with an effective date of June 12, 2022.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not discharged for a current act of misconduct. Benefits must be allowed.

Iowa Code § 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.

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 of misconduct has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Reigelsberger v. Emp't Appeal Bd.*, 500 N.W.2d 64, 66 (Iowa 1993); accord *Lee v. Emp't Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000). 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).

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge cannot be based on such past act or acts. The termination of employment must be based on a current act.

Conduct asserted to be disqualifying misconduct must be current. *West v. Emp't Appeal Bd.*, 489 N.W.2d 731 (Iowa 1992); *Greene v. Emp't Appeal Bd.*, 426 N.W.2d 659 (Iowa Ct. App.

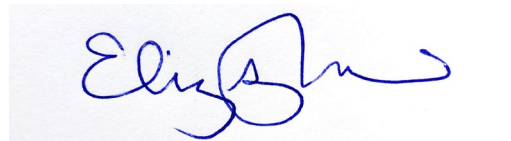
1988). Whether the act is current is measured by the time elapsing between the employer's awareness of the employee's conduct and the employer's notice to the employee that the conduct provides grounds for dismissal. *Id.* at 662.

Here, the conduct at issue involved claimant submitting two post-arrest Incident Reports including contradictory details to the Buchanan County Attorney. The employer became aware of the claimant's contradictory Incident Reports by January 20, 2022, when the Buchanan County Attorney met with Captain Steele to discuss the reports and the county attorney's investigation that would be commencing. At that point, the employer was aware that claimant had potentially made false statements to the Buchanan County Attorney that may lead to a Giglio file being opened on him, which could permanently impair his ability to credibly testify as a Motor Vehicle Officer. The employer did not give the claimant any notice that he was under investigation by the Buchanan County Attorney, nor did it alert him that the outcome of the Buchanan County Attorney's investigation would determine whether the employer took further action. Instead, the employer waited nearly two months before placing claimant on suspension on March 14, 2022. This weeklong span of time between the employer learning of the conduct and the employer suspending the claimant and making him aware that his conduct could lead to his discharge is simply too much time to consider this a current act of misconduct under Iowa unemployment insurance law. Benefits are allowed.

As claimant is allowed benefits based on this separation, the issues of overpayment and chargeability are moot.

**DECISION:**

The July 1, 2022 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason; he was not discharged for a current act of misconduct. Benefits are allowed, provided he is otherwise eligible. The issues of overpayment and chargeability are moot.



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Elizabeth A. Johnson  
Administrative Law Judge

September 29, 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.