

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

**ANDREW SCHULTE**  
Claimant

**HY-VEE INC**  
Employer

**APPEAL NO. 24A-UI-01103-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/24/23**  
**Claimant: Respondent (2)**

Iowa Code Section 96.5(2)(a) & (d) – Discharge for Misconduct  
Iowa Code Section 96.3(7) - Overpayment

**STATEMENT OF THE CASE:**

On January 29, 2024, the employer filed a timely appeal from the January 18, 2024 (reference 01) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on December 11, 2023 for no disqualifying reason. After due notice was issued, a hearing was held on February 19, 2024 participated. Andrew Schulte (claimant) did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Barbara Buss represented the employer and presented testimony through Ajah Anderson, Brett Shelman, and Steven Almonrode. Exhibits 2 through 8 and 10 were received into evidence. Exhibits 1 and 9 were not admitted. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant (DBR). The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with the employment.  
Whether the claimant was overpaid benefits.  
Whether the claimant must repay overpaid benefits.  
Whether the employer's account may be charged.

**FINDINGS OF FACT:**

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

Andrew Schulte (claimant) began his employment with Hy-Vee in 2019 and was employed as the full-time, salaried Food Service Manager at a Des Moines store until December 11, 2023, when Brett Shelman, District Store Director, discharged him from the employment. Jacob Walls, Store Manager, was the claimant's supervisor and communicated the discharge decision to the

claimant. The claimant supervised 15 to 20 employees. The claimant's responsibilities included but were not limited to scheduling and staffing, sales planning, ordering, and carrying out directives issued by Mr. Shelman in connection with Mr. Shelman's review of operations at store number six. The claimant's core work hours were 6:00 a.m. to 4:00 p.m., five days a week. The claimant was expected to work a minimum of 45 hours a week in his salaried position.

On December 8, 2023, Mr. Shelman met with the claimant to discuss why the claimant had neither complied with operational directives Mr. Shelman had issued in October 2023 nor had responded with follow-up emails Mr. Shellman had requested in October 2023. See Exhibits 5 and 6. As part of those earlier directives, Mr. Shelman had the claimant discontinue selling a three-pound ready-made salad that was not selling and that was going to waste on the shelf. When Mr. Shelman visited the store in December, he found the claimant had not discontinued the three-pound salad. During the December 8 meeting, the claimant first asserted he had not received the emailed directives. When Mr. Shelman reminded the claimant that he was part of the manager email communication group and would have received a copy of the emails, the claimant stated that he never read Mr. Shelman's emails. When Mr. Shelman asked whether the claimant read Mr. Walls' emails, the claimant stated he did not consistently read Mr. Walls' emails. Mr. Shelman directed the claimant to thereafter print and comply with emailed directives. Mr. Shelman also told the claimant that the employer needed to see improvement, including implementation of past directives, within the next two weeks or the employer would move the claimant to a less challenging position.

The final incident that triggered the discharge followed the December 8, 2023 meeting. After the meeting, the claimant told some of his subordinates that he did not anticipate being with the company much longer, and that his subordinates should be updating their resumes in anticipation of his departure. In other words, the claimant communicated to his subordinates that their positions with Hy-Vee would be less secure or in jeopardy in the likely event that the claimant would be demoted or discharged. At least one of the claimant's subordinates was unnerved by the claimant's comments and went to Mr. Walls for clarification on whether his employment was in jeopardy. Mr. Walls assured the subordinate that his employment was not in jeopardy and reported the matter to Mr. Shelman. Mr. Shelman subsequently spoke to the subordinate directly.

The employer deemed the claimant's act of discussing his employment discipline issues with his subordinates, and leading the subordinates to think that their employment security might hinge on his continued employment, as violations of the standards set forth in the Code of Conduct. The Code of Conduct was in the handbook that the claimant received at the time of hire. The Code of Conduct starts as follows:

The fundamentals of Hy-Vee are: honesty, integrity, friendliness, caring, sincerity, respect, ethics, morals, dedication, sharing, fairness, manners, dignity and ownership.

On December 11, 2023, the employer met with the claimant to discuss what he had shared with his subordinates. The claimant conceded he had indeed communicated to his subordinates what the subordinate had reported to Mr. Walls. At no time did the claimant indicate to the employer that he had merely advised his subordinates to update their resumes in case they did not care for his successor. The employer discharged the claimant from the employment on December 11, 2023.

The claimant established an original claim for benefits that was effective December 24, 2023. Iowa Workforce Development set the weekly benefit amount at \$582.00. The claimant received

\$1,164.00 in benefits for the two weeks between January 14, 2024 and January 27, 2024. HyVee is the sole base period employer.

On January 12, 2024, Iowa Workforce Development held a fact-finding interview that addressed the claimant's separation from the employment. IWD had mailed the notice on January 8, 2024. The employer's representative of record is located in New Hampshire and did not receive the notice at the address of record until January 16, 2024. At the fact-finding interview, the claimant told the deputy that he had advised subordinates to update their resumes in case they did not like their new supervisor. The claimant left out any reference to the failure to follow employer directives that led to the December 8, 2023 meeting with the employer.

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

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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 disqualification shall continue 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. Misconduct by an individual includes but is not limited to all of the following:

...

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...

See also Iowa Admin. Code r. 871-24.32(1)(a) (repeating the text of the statute).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See Iowa Admin. Code r.871 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected

the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

Continued failure to follow reasonable instructions constitutes misconduct. See *Gilliam v. Atlantic Bottling Company*, 453 N.W.2d 230 (Iowa App. 1990). An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). The administrative law judge must analyze situations involving alleged insubordination by evaluating the reasonableness of the employer's request in light of the circumstances, along with the worker's reason for non-compliance. See *Endicott v. Iowa Department of Job Service*, 367 N.W.2d 300 (Iowa Ct. App. 1985).

The weight of the evidence in the record establishes a December 11, 2023 discharge for misconduct in connection with the employment. On December 8, 2023, the claimant essentially conceded to the employer that he had engaged in a pattern of insubordination and negligent performance of his work duties, by failing to review and comply with the reasonable operations directives contained in Mr. Shelman's emails. Upon reviewing the condition of the claimant's department, the employer observed evidence of non-compliance. The claimant's failure to read and comply with the employer's reasonable emailed directive was unreasonable. On December 8, 2023, the employer placed the claimant on warning that his position was in jeopardy. The claimant elected to further act contrary to the employer's interests by communicating to subordinates his own discipline issues and by communicating to subordinates that their employment could be in jeopardy if the claimant lost his position. The claimant's conduct reflected an intentional and substantial disregard of the employer's interests. The claimant is disqualified for benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements.

The claimant received benefits but this decision disqualifies the claimant for benefits. The benefits the claimant received are an overpayment of benefits.

Iowa Code section 96.3(7) provides in relevant part as follows:

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. The employer shall not be relieved of charges if benefits are paid

because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers. If the department determines that an employer's failure to respond timely or adequately was due to insufficient notification from the department, the employer's account shall not be charged for the overpayment.

(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.

IWD provided the employer insufficient notice of the fact-finding interview and, thereby, denied the employer a reasonable opportunity to participate. The employer's account will be relieved of charges for benefits, including charges for benefits already paid.

The weight of the evidence establishes that the claimant willfully misrepresented material facts to the IWD deputy in connection with the fact-finding interview. The claimant willfully omitted reference to the circumstances that led to the December 8, 2023 meeting with the employer. The claimant willfully misrepresented that he had not made statements to his subordinates about their employment being in jeopardy if he lost his position. Because the claimant willfully misrepresented material facts, the claimant must repay the overpaid benefits.

**DECISION:**

The January 18, 2024 (reference 01) decision is REVERSED. The claimant was discharged on December 11, 2023 for misconduct in connection with the employment. The claimant is disqualified for unemployment benefits until he has worked in and been paid wages for insured work equal to 10 times his weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant was overpaid \$1,164.00 in benefits for the two weeks between January 14, 2024 and January 27, 2024. The claimant must repay the overpaid benefits. The employer's account will be relieved of charges for benefits, including charges for benefits already paid.



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James E. Timberland  
Administrative Law Judge

February 27, 2024  
Decision Dated and Mailed

**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 Ave Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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>.

**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 Ave Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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 está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**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.