

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

**FELICIA M O'DONNELL**  
Claimant

**ALDI INC**  
Employer

**APPEAL 23A-UI-07380-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/02/23  
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge from Employment

**STATEMENT OF THE CASE:**

On July 28, 2023, employer Aldi Inc. filed an appeal from the July 21, 2023 (reference 01) unemployment insurance decision that allowed benefits after claimant's June 2, 2023 separation from employment. The parties were properly notified of the hearing. An initial hearing was scheduled at 9:00 a.m. on Tuesday, August 15, 2023. When that hearing commenced, the employer witnesses indicated they had sent exhibits to their third-party servicer for submission for the hearing; those exhibits had not been received. The administrative law judge granted one postponement so the employer could coordinate with its third-party servicer to submit exhibits to the Appeals Bureau and provide them to the claimant.

A telephonic hearing was held at 3:00 p.m. on Monday, August 28, 2023. Claimant Felicia M. O'Donnell participated. Employer Aldi Inc. participated through Jacob Rhodes, District Manager; and Jennifer Allen, Store Manager; Rhodes acted as the employer's representative. No exhibits were admitted into the record: the employer had submitted them to the Appeals Bureau, but it had not provided them to the claimant. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Whether the separation was a discharge from employment for disqualifying, job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer on October 22, 2022. Most recently, she worked full-time hours as a lead store associate. Claimant's employment ended on June 2, 2023, when she was discharged for violating the employer's policy on purchasing dated products.

Claimant worked a shift on May 8, 2023. At the beginning of her shift, claimant asked Allen if she could purchase a Hostess product that was set to expire. Allen told her she could have the product for \$1.00. Claimant later found two slices of cheesecake on the shelf that were set to expire as well, and claimant decided to purchase those as well. When she had a moment during her shift, she took the three items to the register and asked the cashier to ring up each

item for \$1.00; she then paid for the items and completed the sale. Claimant had the cashier ring up the cheesecake slices for \$1.00 each because that was what Allen determined was the value of the Hostess product, and the Hostess product's original price was higher than the cheesecake's price.

Aldi's written policy prohibited the sale of expired product. The written policy permitted markdowns on product that would expire soon; however, that product was supposed to be made available to customers first. Claimant knew of an assistant manager who purchased expiring product in the same way she did on May 8. The first store manager she worked under, Brian, allowed employees to purchase expired products. The next store manager, Janessa, was just a fill-in store manager who came in from another store. She ran the store so well that there was never expired product available for people to purchase.

Claimant's purchase on July 8 went without mention for several weeks. Then, Rhodes and Allen called a meeting with the lead store associates about social media posts regarding things happening at the store. He indicated they needed to figure out who was posting about the store and "stop the gossip." The next thing claimant knew, she was being discharged.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$3,152.00, since filing a claim with an effective date of July 2, 2023, for the eight weeks ending August 26, 2023. The administrative record also establishes that the employer did not participate in the fact-finding interview.

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

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason. Benefits are allowed.

Iowa Code section 96.5(2)(a) and (d) provide:

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 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 even 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.

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).

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 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. 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). What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988).

Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee. Negligence does not constitute misconduct unless recurrent in nature; a single act is not disqualifying unless indicative of a deliberate disregard of the employer's interests. *Henry v. Iowa Dep't of Job Serv.*, 391 N.W.2d 731 (Iowa Ct. App. 1986). 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).

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.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. Claimant credibly described the events of May 8, from her initial conversation with Allen about purchasing the Hostess product to her determination on the process of the cheesecake slices to her completing the purchase during work time. Allen had the opportunity to rebut claimant's testimony and she remained silent: she did not deny permitting claimant's purchase of the Hostess product for \$1.00, and she did not deny allowing the sale of expired product under her management. While the employer's written policy may prohibit the sale of expired product, that policy is meaningless if not uniformly and consistently enforced at the store.

The employer discharged claimant for purchasing expiring product while on work time. Though claimant's conduct violated the employer's written policies, it was in line with approved practices under the current general manager and it was conduct claimant engaged in after using her own

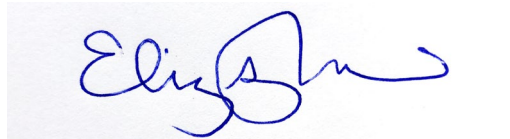
reasoning to try and get the best outcome for her employer. The employer has not met its burden of proving claimant engaged in disqualifying, job-related misconduct sufficient to deny unemployment insurance benefits. Benefits are allowed.

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

**DECISION:**

The July 21, 2023 (reference 01) unemployment insurance decision is affirmed. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

The issues of overpayment and chargeability are moot.



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Elizabeth A. Johnson  
Administrative Law Judge

September 1, 2023  
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.