

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

**ESTELLE CRUZ**  
Claimant

**HILLS AND DALES CHILD DEVELOPMENT**  
Employer

**APPEAL 24A-UI-02033-S2**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/28/24**  
**Claimant: Appellant (1)**

Iowa Code § 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 13, 2024, (reference 01) unemployment insurance decision that denied benefits based upon a finding claimant was discharged due to excessive absenteeism. The parties were properly notified of the hearing. An in-person hearing was held on March 18, 2024, in Dubuque, Iowa. Claimant Estelle Cruz participated and testified. Employer Hills and Dales Child Development Center participated through witnesses human resources assistant director Shari Bockenstedt, program coordinator Zoe Framke, and assistant director for community programs Danielle Knockel. Attorney Joseph Kane represented employer. Claimant's Exhibits A - C were received. Employer's Exhibits 1 - 7 were received.

**ISSUE:**

Was the claimant discharged for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a personal assistant from August 18, 2021, until January 25, 2024, when she was discharged.

Claimant worked in a group home providing care to clients. Claimant had performed this type of work during her career for 20 years. On January 18, 2024, claimant's supervisor Ms. Framke, notified claimant she would need to go to the residential center on January 23 and 25, 2024, for training with a new client who was scheduled to move into the home where claimant was assigned to work. The purpose of the training was to learn about the client's meal expectations, medications, and specific care needs. Claimant did not believe she needed to attend the training because she had done similar training in the past. Ms. Framke explained that all staff were required to do this training, including Ms. Framke herself.

Claimant did not attend the January 23 training. When Ms. Framke asked a question about the training, claimant admitted she did not attend. Claimant did not attend because she believed she knew how to do her job and did not need any additional training. Employer called claimant

into a meeting on January 24, 2024, with Ms. Knockel and Ms. Bockenstedt to discuss her failure to report to the training. Claimant's supervisor covered her shift while claimant attended the meeting. Ms. Knockel and Ms. Bockenstedt explained to claimant that her refusal to attend the training was considered insubordination and she would receive a written warning as a result. They discussed the importance of attending training, confirmed the time and place for the training the following day, and informed her that if she failed to attend she could face termination. Claimant indicated she understood and would report for training. Claimant did not return to the house to finish her shift after the meeting.

On January 25, 2024, claimant did not attend the training because she chose not to. On January 25, 2024, employer discharged claimant for insubordination for refusing to attend the training after having been warned.

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

For the reasons that follow, the administrative law judge concludes the claimant was discharged from employment due to job-related misconduct.

Iowa Code section 96.5(2)a provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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.

Iowa Code section 96.5(2)b, c and d provide:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:

b. Provided further, if gross misconduct is established, the department shall cancel the individual's wage credits earned, prior to the date of discharge, from all employers.

c. Gross misconduct is deemed to have occurred after a claimant loses employment as a result of an act constituting an indictable offense in connection with the claimant's employment, provided the claimant is duly convicted thereof or has signed a statement admitting the commission of such an act. Determinations regarding a benefit claim may be redetermined within five years from the effective date of the claim. Any benefits paid to a claimant prior to a determination that the claimant has lost employment as a result of such act shall not be considered to have been accepted by the claimant in good faith.

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:

- (1) Material falsification of the individual’s employment application.
- (2) Knowing violation of a reasonable and uniformly enforced rule of an employer.
- (3) Intentional damage of an employer’s property.
- (4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer, or a combination of such substances, on the employer’s premises in violation of the employer’s employment policies.
- (5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer’s premises in violation of the employer’s employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.
- (6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.
- (7) Incarceration for an act for which one could reasonably expect to be incarcerated that result in missing work.
- (8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.
- (9) Excessive unexcused tardiness or absenteeism.
- (10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.
- (11) Failure to maintain any licenses, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual’s regular job duties, unless the failure is not within the control of the individual.
- (12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.

(13) Theft of an employer or coworker's funds or property.

(14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

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.

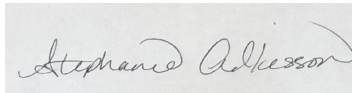
An employee's failure to perform a specific task may not constitute misconduct if such failure is in good faith or for good cause. See *Woods v. Iowa Department of Job Service*, 327 N.W.2d 768, 771 (Iowa 1982). "[W]illful misconduct can be established where an employee manifests an intent to disobey the reasonable instructions of his employer." *Myers v. IDJS*, 373 N.W.2d 507, 510 (Iowa 1983) (quoting *Sturniolo v. Commonwealth, Unemployment Compensation Bd. of Review*, 19 Cmwlt. 475, 338 A.2d 794, 796 (1975)); *Pierce v. IDJS*, 425 N.W.2d 679, 680 (Iowa Ct. App. 1988).

In insubordination cases, the reasonableness of the employer's demand in light of the circumstances must be evaluated, 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 key to such cases is not the worker's subjective point of view but "what a reasonable person would have believed under the circumstances." *Aalbers v. Iowa Department of Job Service*, 431 N.W.2d 330, 337 (Iowa 1988); accord *O'Brien v. EAB*, 494 N.W.2d 660 (Iowa 1993)(objective good faith is test in quits for good cause).

Claimant was warned after failing to attend the first scheduled training that any further refusal to attend training may result in termination of employment. Employer's request to have claimant attend training to prepare for a new client's arrival in the home was a reasonable request, as ensuring the care and safety of client's is of great importance to employer. Claimant's refusal to attend training because she did not think she needed it was not reasonable. Employer has established claimant failed to comply with its instructions despite having been warned to do so. Claimant was discharged for disqualifying, job-related misconduct. Benefits are denied.

**DECISION:**

The February 13, 2024, (reference 01) unemployment insurance decision is AFFIRMED. The claimant was discharged from employment due to job-related misconduct. Unemployment insurance benefits funded by the State of Iowa are denied until the claimant has worked in and been paid wages for insured work equal to ten times their weekly benefit amount after the January 25, 2024 separation date, and provided they are otherwise eligible.

A handwritten signature in cursive script, reading "Stephanie Adkisson", is shown within a rectangular box.

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Stephanie Adkisson  
Administrative Law Judge

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March 21, 2024  
Decision Dated and Mailed

SA/jkb

**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:

**Iowa Employment Appeal Board  
6200 Park Avenue 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> 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:

**Iowa Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
En línea: [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 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.