

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

ROBERT L MYERS
Claimant

HY-VEE INC
Employer

APPEAL 24A-UI-03065-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/18/24
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

On March 18, 2024, claimant Robert L. Myers filed an appeal from the March 11, 2024 (reference 01) unemployment insurance decision that denied benefits, determining the employer discharged claimant on February 22, 2024 for violation of a known company rule. The Unemployment Insurance Appeals Bureau mailed notice of the hearing on March 22, 2024. Administrative Law Judge Elizabeth A. Johnson held a telephonic hearing at 9:00 a.m. on Wednesday, April 10, 2024. Claimant Robert L. Myers personally participated. Employer Hy-Vee Inc. participated through witnesses Brent McKenzie, Vice President of Transportation; Abby Beier, Director of Human Resources; and was represented by Barbara Buss of Experian. Claimant's Exhibits 1 through 30 and Employer's Exhibits E1 through E8 were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

ISSUE:

Whether claimant was discharged 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 employment with Hy-Vee Inc. on October 3, 2022. He worked full-time hours as the compliance manager of transportation. Claimant's employment ended on February 22, 2024, when the employer discharged him for providing fraudulent information during a company investigation.

As the compliance manager of transportation, claimant was frequently traveling and was required to oversee a large segment of the employer's drivers. The employer required the compliance manager of transportation to be a trustworthy communicator, to accurately and reliably relay information via phone, text, and email while offsite. The employer had to trust that this manager was making good judgment and acting with integrity at all times.

On February 21, 2024, claimant sent Vice President of Transportation Brent McKenzie a picture of marijuana via text message. McKenzie contacted claimant to request more information about the photo, and claimant indicated he had found the marijuana in one of the employer's trucks in Kansas City, where he was working that day. McKenzie asked if he retained the sample, and

claimant told him that the marijuana had blown out of the truck when he had both of the truck's doors open. At that point, McKenzie asked claimant to document the incident thoroughly. Claimant emailed McKenzie at 4:35 p.m., attaching the photo and telling McKenzie he took the photo that day and found the drug in the truck but was unable to retain the sample.

Later that afternoon, McKenzie received information from the employer's Assistant Vice President of Supply Chain Security informing him that there were concerns with the information claimant provided. Specifically, claimant was not the photographer of the photo McKenzie received earlier that day. Kansas City driver Dan Sweeney had actually taken the photo on January 21, 2024 at 1:28 p.m., according to the photograph's metadata. (Exhibits E3 and E4) When McKenzie received this information, he immediately called claimant and asked him if he took the photo that he had sent earlier. Claimant replied that he took the photo. He then asked claimant again if he took the photo, this time disclosing that he had received an email from security stating the photo was actually taken by Sweeney. At that point, claimant admitted that it was an old photo. After conferring with the Assistant Vice President, McKenzie told claimant to drive back home and come in to meet with him the following day.

At 11:00 p.m. on February 21, claimant sent McKenzie an email stating he sent the photo that Sweeney had taken because he "figured coming from me it would keep other drivers from knowing that Dan told on them." (McKenzie testimony) When claimant came in the following morning, he met with McKenzie and again admitted that he had not taken the photo. At that point, McKenzie discharged him from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for disqualifying, job-related misconduct. Benefits are withheld.

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...

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).

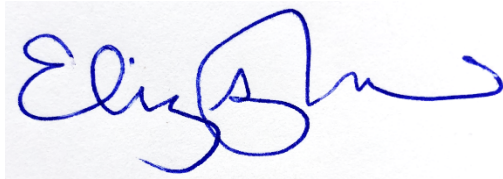
It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct evidence than it chooses to present, the administrative law judge may infer that evidence not presented would reveal deficiencies in the party's case. *Crosser v. Iowa Dep't of Pub. Safety*, 240 N.W.2d 682 (Iowa 1976). 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. To the limited extent that a credibility determination is necessary in this case, I find McKenzie's testimony credible and I believe that claimant claimed he took the photograph in question until confronted with evidence that the photo was taken by someone else.

Claimant admits he intentionally made false statements to McKenzie when reporting that he found marijuana inside one of the employer's vehicles. Claimant may have thought he was building trust with his subordinate by taking credit for the subordinate employee's photo. However, his fabricated story to McKenzie undermined the trust his employer had placed in him and called into question McKenzie's ability to send claimant out traveling and largely unsupervised to work independently and communicate accurately and truthfully. The employer has established it discharged claimant for disqualifying, job-related misconduct after claimant showed an intentional and substantial disregard for the employer's interests by lying to McKenzie. Benefits must be withheld.

DECISION:

The March 11, 2024 (reference 01) unemployment insurance decision is affirmed. The employer discharged claimant from employment due to job-related misconduct. Benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.



Elizabeth A. Johnson
Administrative Law Judge

April 11, 2024
Decision Dated and Mailed

lj/scn

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**

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**

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.