

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

**JESSICA K ENGLE**  
Claimant

**APPEAL 24A-UI-03713-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JAYBIRD SENIOR LIVING**  
Employer

**OC: 03/17/24  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On April 10, 2024, claimant Jessica K. Engle filed an appeal from the April 8, 2024 (reference 01) unemployment insurance decision that denied benefits, determining employer Jaybird Senior Living discharged her on March 19, 2024 for excessive, unexcused absenteeism. The Unemployment Insurance Appeals Bureau mailed notice of the hearing on April 12, 2024. Administrative Law Judge Elizabeth A. Johnson held a telephonic hearing at 3:00 p.m. on Monday, April 29, 2024. Claimant Jessica K. Engle participated. Employer Jaybird Senior Living participated through witness Traci Anderson, Executive Director; and was represented by Cheryl Valens, Hearing Representative with Employers Edge. Employer's Exhibits A, B, and C were received and admitted into the record without objection; Exhibit D was admitted over objection.

**ISSUE:**

Whether the employer discharged claimant 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 Jaybird Senior Living on January 8, 2024. She worked full-time hours as a healthcare coordinator. Her job duties included supervising and supporting the resident assistants ("RA"s), medication management, med changeover, and training. Claimant's employment ended on March 19, 2024, when the employer discharged her for insubordination.

On March 6, claimant had difficulty accessing the internet at work. (Exhibit 3) She spoke with Robert Blasinski, the employer's operations coordinator, and he took steps to address them. (Exhibit 3) Blasinski told her on March 6 that her position was not a work from home position. (Exhibit 3) The following morning, claimant emailed Blasinski, Regional Director of Nursing Jenny Tritle, and employees Lisa Gering and Sara Jelinek and told them: I will not be able to work in the building until the issue with the internet is resolved." (Exhibit 3)

Tritle promptly responded to claimant's message, stating she was required to be present on-site for job duties that did not require internet access. (Exhibit C) Tritle continued: "I understand this

is frustrating, but this is not a work from home position and your residents and staff rely on you being in the community. Please plan to be in the building per norm, Bob and Traci will work on the internet issues.” (Exhibit C) Claimant responded, agreeing that she was required to be on-site but venting that she was required to complete documentation as part of her position, and she needed an internet connection to complete that documentation. (Exhibit C) Tritle responded, stating: “I totally understand your frustration here Jess but you are still required to be in the community.” (Exhibit C) Claimant complied with the employer’s instructions and came to work that day.

On March 18, 2024, claimant decided to work from home. She sent the management team (including Anderson) a Microsoft Teams message stating, “I will be working from home today.” When this occurred, Anderson communicated with the regional director of operations, the regional director of nursing, and the CEO and determined claimant must be discharged. Anderson had concerns with claimant’s interactions with staff prior to this incident, stemming from incidents that occurred on March 7 and March 12.

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

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for disqualifying misconduct.

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:

(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 results 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 license, 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).

"[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 Cmwlth. 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). For example, in *Green v. IDJS*, 299 N.W.2d 651 (Iowa 1980) an employee refused to sign a warning to acknowledge that she understood why she was being warned. The Court found claimant's refusal to sign disqualifying as a matter of law, and did not focus on whether the warning was justified or not. *Green* at 655. The claimant's refusal "show[ed] an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer." 871 IAC 24.32(1)(a).

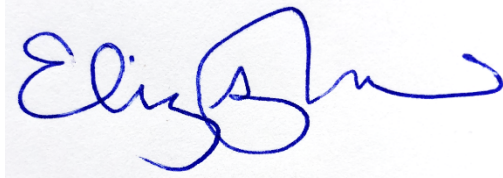
The administrative law judge has an obligation to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The Iowa Supreme Court has ruled that if a party has the power to produce more explicit and direct 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.* The fact finder may consider the following factors when deciding what testimony to believe: 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. I find Anderson's testimony more believable than Engle's testimony. Claimant made contradictory statements, claiming she did not disregard the employer's instructions and work from home after she was told to stop doing so then later stating she did work from home again but just not on the date the employer said she did. I do not believe claimant's testimony that the employer's statements to her on March 6 and emails to her on March 7 did not notify her that she was not allowed to work from home during the workday. A reasonable reading of the email thread on March 7 clearly communicates that claimant is required to work on-site, particularly as she was told the day prior that her position was not a work from home position.

On March 6 and 7, 2024, the employer clearly informed claimant that she was not permitted to perform her work at home. This was not about whether claimant was ever allowed to take work home and catch up on documentation after-hours, but about the employer requiring claimant to be on-site and available for staff and RAs during the weekdays. The employer's requirement that claimant work on-site is reasonable, and claimant's decision to disregard the employer's clear directive on March 18 and work from home was not reasonable. Claimant deliberately disregarded the employer's instructions and provided no justification for doing so. The employer discharged claimant for disqualifying insubordination. Benefits must be withheld.

**DECISION:**

The April 8, 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 her weekly benefit amount, provided she is otherwise eligible.



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Elizabeth A. Johnson  
Administrative Law Judge

May 1, 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](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.