

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

**RICKEY R BAISTEN**  
Claimant

**APPEAL 24A-UI-02163-S2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BILLS' BROS FREIGHT SALVAGE INC**  
Employer

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

Iowa Code § 96.5(2)a – Discharge for Misconduct  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 19, 2024, (reference 01) unemployment insurance decision that allowed benefits based upon a finding that claimant was discharged with no evidence of misconduct. The parties were properly notified about the hearing. A telephone hearing was held on March 20, 2024. Claimant Rickey Baisten participated. Employer Bills' Bros Freight Salvage, Inc. participated through owner Mike Bills. Exhibits 1 and 2 were received. The administrative law judge took official notice of the administrative record.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?  
Has the claimant been overpaid unemployment insurance benefits, and if so, can the repayment of those benefits to the agency be waived?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a warehouse worker and truck driver from May 2, 2023, and was separated from employment on January 31, 2024, when he was discharged.

The final incident leading to discharge occurred on January 30, 2024. On that date, a truck used by employer for deliveries was returned after owner Mike Bill's son-in-law and his friend performed some repairs on the truck. An employee attempted to start the truck to back it up so claimant could load it to make the day's deliveries; however, it would not start. Because claimant performed maintenance on the truck and regularly drove it, he inspected the truck along with one of the individuals who had repaired it the day before. They finally determined the fuel pump was likely the issue. Prior to installing a new fuel pump, they discovered the wires that supplied electricity to the fuel pump inside the tank and one to the sensor that displayed how much gas was available in the tank were pulled out. Within 10 minutes, they fixed the truck so that it was operational. Claimant drove the vehicle that day and the next to make deliveries without issue.

After the repair was made on January 30, 2024, Mr. Bills wondered why the wires were not connected. He reviewed security footage from that morning and saw claimant leave the warehouse around 9:05 a.m., go underneath the truck for a few moments, and then return inside. This was prior to discovering the truck would not start. Claimant was checking for leaks, which he does each morning before driving the vehicle.

Mr. Bills concluded claimant went underneath the truck to rip out the wires. He believed claimant was jealous that Mr. Bills had someone else work on the truck. On January 31, 2024, employer discharged claimant. Mr. Bills and his wife, Sandy Bills, informed claimant they were parting ways due to a trust issue. Neither mentioned the truck or the video during the termination meeting.

Claimant received no disciplinary action during his employment. Employer viewed claimant as an invaluable employee who performed multiple job duties well.

The administrative record reflects that claimant has received unemployment benefits in the amount of \$3,917.00, since filing a claim with an effective date of January 28, 2023, for the seven weeks ending March 16, 2024. Employer did participate in the fact-finding interview through witness Sandy Bills.

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

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

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 Admin. Code r. 871-24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being 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. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

This definition has been accepted by the Iowa Supreme Court as accurately reflecting the intent of the legislature. *Huntoon v. Iowa Dep't of Job Serv.*, 275 N.W.2d 445, 448 (Iowa 1979).

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). 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).

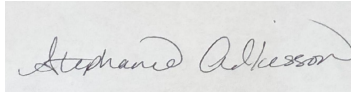
Employer believed claimant tampered with the truck, but claimant credibly testified he did not tamper with the wires. It seems unlikely that claimant would be so upset that someone else worked on the truck that he would cause damage to it, thus rendering him unable to perform his job duties. Claimant spent time trying to diagnose the problem further supporting his statement that he did not tamper with the vehicle. Mr. Bills did not see claimant disconnect or cut any wires, nor did he ask claimant what happened on January 30, 2024, to find out why he might have been under the vehicle. Instead, employer discharged a valuable employee without any conversation about what led to the decision.

An employer may discharge an employee for any number of reasons or no reason at all if it is not contrary to public policy, but if it fails to meet its burden of proof to establish job related misconduct as the reason for the separation, employer incurs potential liability for unemployment insurance benefits related to that separation. Here, employer has not established that claimant engaged in job-related misconduct. As a result, employer has not met the burden of proof to establish that claimant engaged in misconduct that would disqualify him from benefits. Benefits are allowed.

Because claimant is eligible for benefits, the issues of overpayment of regular unemployment insurance benefits and relief of charges are moot.

**DECISION:**

The February 19, 2024, (reference 01) unemployment insurance decision is affirmed. There was no disqualifying separation. The claimant is allowed benefits, provided they remain otherwise eligible. The issues of overpayment, repayment and chargeability are moot.

A handwritten signature in cursive script, reading "Stephanie Adkisson", written in dark ink on a light-colored rectangular background.

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Stephanie Adkisson  
Administrative Law Judge

March 21, 2024  
Decision Dated and Mailed

r/s

**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**

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 adquiera 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.