

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

**ROBERT L MCAHREN**  
Claimant

**ADVANCE SERVICES INC**  
Employer

**APPEAL 23A-UI-12139-DZ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/26/23  
Claimant: Respondent (5)**

Iowa Code § 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

Advance Services Inc, the employer/appellant,<sup>1</sup> appealed the Iowa Workforce Development (IWD) December 22, 2023 (reference 03) unemployment insurance (UI) decision. IWD found Mr. McAhren eligible for REGULAR (state) UI benefits because IWD concluded the worked for the employer, a temporary staffing agency, until his assignment ended on November 11, 2023, and he notified the employer within three working day of the end of his assignment. On January 2, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to the employer and Mr. McAhren for a telephone hearing scheduled for January 16, 2024.

The undersigned administrative law judge held a telephone hearing on January 16, 2024. The employer participated in the hearing through Melissa Lewien, risk manager. Mr. McAhren participated in the hearing personally. The administrative law judge took official notice of the administrative record and admitted Employer's Exhibits 1-3 as evidence.

**ISSUES:**

Did Mr. McAhren voluntarily quit without good cause attributable to the employer?  
Did IWD overpay Mr. McAhren UI benefits?  
If so, should he repay the benefits?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Mr. McAhren began working for the employer on July 12, 2023. He worked as a full-time, season packing assistant assigned to work for employer Corteva. His employment ended on November 11, 2023.

Mr. McAhren attended work on Saturday, November 11. Toward the beginning of his shift, Mr. McAhren told one of the Corteva supervisors (Supervisor A) that his knee hurt, and he may have to leave early. Supervisor A told Mr. McAhren to try to continue working and let someone

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<sup>1</sup> Appellant is the person or employer who appealed.

know if he needed to leave early. As the day went along, Mr. McAhren's knee got worse. At about 3:30 p.m., Mr. McAhren told another supervisor (Supervisor B) that he needed to leave and that he would try to be back at work the next day. Supervisor B told Mr. McAhren that it was okay for him to leave, and Mr. McAhren left.

At 5:04 p.m., the Corteva production location manager sent an email to the employer (Advance Services Inc). The manager told the employer that Supervisor A told the manager that Mr. McAhren left the job at about 3:30 p.m. without telling anyone that he was leaving or giving a reason for his leaving. The manager asked the employer to end Mr. McAhren's assignment with Corteva.

At 5:15 p.m., the employer called Mr. McAhren, but Mr. McAhren did not answer, and the employer could not leave a voice message. At 5:19 p.m., the employer texted Mr. McAhren that his assignment was over, directed him to not return to Corteva, and told him to contact the employer on Monday, November 13 if he had questions.

Mr. McAhren went to the employer's office on Monday, November 13 and asked why the employer ended his assignment. The employer stated that it was because he walked off the job on November 11. The employer's policy provides that walking off the job is a violation of the work rules. Mr. McAhren asked for a new assignment. The employer told Mr. McAhren that the employer did not have any new assignments available due to the upcoming holidays.

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

For the reasons that follow, the administrative law judge concludes Mr. McAhren did not quit. The employer discharged him from employment on November 11, 2023 for a reason that does not disqualify him from receiving UI benefits.

Iowa Code section 96.5(1)(j) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Iowa Admin. Code r. 871-24.25 provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10.

Iowa Code section 96.5(2)(a) and (d) provide, in relevant part:

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 individual shall be disqualified for benefits 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 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.

Absences due to properly reported illness cannot constitute work-connected misconduct since they are not voluntary. This is true even if the employer was fully within its rights to assess points or impose discipline up to or including discharge for the absence under its attendance policy.<sup>2</sup> Medical documentation is not essential to a determination that an absence due to illness should be treated as excused.<sup>3</sup> Absences related to other issues such as transportation, lack of childcare, and oversleeping are not considered excused.<sup>4</sup> When a claimant does not provide an excuse for an absence the absences is deemed unexcused.<sup>5</sup>

The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer.<sup>6</sup> A voluntary leaving of employment requires an intention to terminate the employment relationship accompanied by an overt act of carrying out that intention.<sup>7</sup> "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular.<sup>8</sup>

The employer has the burden of proof in establishing disqualifying job misconduct.<sup>9</sup> The issue is not whether the employer made a correct decision in separating the claimant from employment, but whether the claimant is entitled to unemployment insurance benefits.<sup>10</sup> Misconduct must be "substantial" to warrant a denial of job insurance benefits.<sup>11</sup>

In an at-will employment environment 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, it incurs potential liability for unemployment insurance benefits related to that separation. 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 of the employer's policy or rule 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.

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<sup>2</sup> Iowa Admin. Code r. 871-24.32(7); *Cosper*, 321 N.W.2d at 9; *Gaborit v. Emp't Appeal Bd.*, 734 N.W.2d 554 (Iowa Ct. App. 2007).

<sup>3</sup> See *Gaborit*, 734 N.W.2d at 555-558.

<sup>4</sup> *Higgins*, 350 N.W.2d at 191.

<sup>5</sup> *Id.*; see also *Spragg v. Becker-Underwood, Inc.*, 672 N.W.2d 333, 2003 WL 22339237 (Iowa App. 2003).

<sup>6</sup> Iowa Code § 96.6(2).

<sup>7</sup> *Local Lodge #1426 v. Wilson Trailer*, 289 N.W.2d 608, 612 (Iowa 1980).

<sup>8</sup> *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

<sup>9</sup> *Cosper v. Iowa Dep't of Job Serv.*, 321 N.W.2d 6 (Iowa 1982).

<sup>10</sup> *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

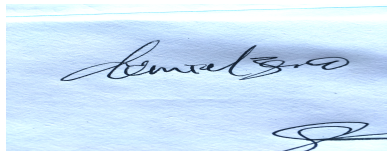
<sup>11</sup> *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

In this case, Mr. McAhren told Supervisor A about his knee and his potential need to leave early, and he told Supervisor B that he was leaving and got Supervisor B's okay to leave. Mr. McAhren properly reported his leaving early and he did not quit. The employer ended Mr. McAhren's job based on the production location manager's email, which relayed what Supervisor A told the production location manager. When the employer was not able to reach Mr. McAhren by phone, the employer ended Mr. McAhren's employment. But the employer has not established disqualifying, job-related misconduct on the part of Mr. McAhren. Mr. McAhren is eligible for UI benefits, as long as no other decision denies him UI benefits.

Since Mr. McAhren is eligible for REGULAR (state) UI benefits per this decision, the issues of overpayment and repayment are moot. An issue being moot means there is nothing left to decide.<sup>12</sup>

**DECISION:**

The December 22, 2023 (reference 03) UI decision is MODIFIED WITH NO CHANGE IN EFFECT. Mr. McAhren did not quit. The employer discharged Mr. McAhren from employment on November 11, 2023 for a reason that does not disqualify him from receiving UI benefits. Mr. McAhren is eligible for UI benefits, as long as no other decision denies him UI benefits.

A handwritten signature in black ink, appearing to read "Daniel Zeno", is written over a light blue background. Below the signature is a small, stylized flourish or mark.

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Daniel Zeno  
Administrative Law Judge

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January 18, 2024  
Decision Dated and Mailed

DZ/jkb

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<sup>12</sup> *Iowa Bankers Ass'n v. Iowa Credit Union Dep't*, 335 N.W.2d 439, 442 (Iowa 1983).

**APPEAL RIGHTS.** If you disagree with this 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  
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:

**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.