

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

AZUCENA D VALENZUELA
Claimant

APPEAL NO. 25A-UI-02977-B2

**ADMINISTRATIVE LAW JUDGE
DECISION**

FT DODGE CORRECTIONAL FACILITY
Employer

OC: 03/23/25
Claimant: Appellant (2)

Iowa Code § 96.5-2-a – Discharge for Misconduct

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 9, 2025, (reference 01) which held claimant ineligible for unemployment insurance benefits. After due notice, an in person hearing was scheduled for and held on May 7, 2025. Claimant participated personally and with attorney Jim Duff. Employer participated through hearing officer Ken Pess and witness Don Harris. Employer Exhibits 1-2 and Claimant's Exhibit A were admitted into evidence.

ISSUES:

Whether claimant was discharged for misconduct?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on December 22, 2024. Employer discharged claimant on March 20, 2025 because claimant was alleged to have a relationship with an inmate that violated tenets of the employment handbook and other ancillary documents surrounding correction officers' responsibilities.

Claimant worked as a full time correction officer for employer. She was employed for over three years by employer prior to her discharge. On October 8, 2024 two of claimant's superiors approached claimant surrounding a rumor going through the unit that claimant was being enlisted to smuggle items into the correctional facility for an inmate. Claimant denied these rumors. Employer stated that at the meeting claimant was told that her interactions with the inmate were concerning. Claimant denied this statement ever occurred and employer did not bring any participants from the meeting to testify.

On December 22, 2024 claimant was put on administrative leave while employer investigated an alleged improper relationship between claimant and an inmate. The investigation looked into reports of claimant talking with the inmate on the phone, talking with the claimant for extended

periods at work, and looking at the claimant in an inappropriate manner. The claimant denied the allegations.

Employer stated that video footage showed the claimant talking with the inmate for extended periods on multiple occasions between the date of October 8, 2024 and December 22, 2024. Employer pointed out six occasions between November 21, 2024 and December 18, 2024 when claimant and employer were seen on video communicating while claimant was working. There was no indication what occurred in any of the discussions, but employer alleged that during an encounter on November 21, 2024 between the claimant and an inmate that the claimant took the inmate's iPad type device (all inmates have them) and put in a phone number of a burner phone she'd purchased. Employer provided no evidence of any information put into the device at or around the time of claimant's handling of it. Claimant stated that she did handle the device, but was unable to get into it as it was password protected.

Employer alleged that the inmate called claimant's burner phone on multiple occasions expressing his affection for her and wanting to be with her. The person on the other end shared affections with claimant. These calls were made during times when claimant was not working but claimant's fiancé was. The employer found multiple people (none of whom testified) to state that they believed it was claimant on the other end of the phone. Claimant offered to employer to provide access to all banking accounts and Venmo and Paypal in an attempt to show that she had not purchased a burner phone. Claimant denied she was involved in any of the accounts. (The inmate's statement that he was not calling claimant is given no credible weight as the totality of his statement surrounding calls made was not coherent, and is seen by the judge as evasive.)

Employer stated that claimant violated Iowa Department of Corrections PREA policy 02 and the Iowa General Rules of Employee Conduct (AD-PR-11). These policies set out sanctions for violations of policies regarding sexual harassment and sexual misconduct. Employer stated that as claimant was in a position of authority over the inmate, the inmate is deemed the victim – although in this matter it appears that the inmate initiated nearly all contact.

Employer conducted an extensive investigation, and after said investigation the allegations of staff sexual misconduct were determined to be founded. Claimant was terminated from her position.

Claimant agreed that she received each of these policies at or around the time of employment and further agreed that if she had done what the allegations suggest, those actions would be grounds for termination.

REASONING AND CONCLUSIONS OF LAW:

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.

A claimant is not qualified to receive unemployment insurance benefits if an employer has discharged the claimant for reasons constituting work connected misconduct. Iowa Code § 96.5-2-a. Before a claimant can be denied unemployment insurance benefits, the employer has the burden to establish the claimant was discharged for work-connected misconduct. *Cosper v. Iowa Department of Job Service*, 321 N.W.2d 6 (Iowa 1982), Iowa Code § 96.5-2-a.

The employer bears the burden of proving that a claimant is disqualified from receiving benefits because of substantial misconduct within the meaning of Iowa Code section 96.5(2). *Myers*, 462 N.W.2d at 737. The propriety of a discharge is not at issue in an unemployment insurance case. An employer may be justified in discharging an employee, but the employee's conduct may not amount to misconduct precluding the payment of unemployment compensation. Because our unemployment compensation law is designed to protect workers from financial hardships when they become unemployed through no fault of their own, we construe the provisions "liberally to carry out its humane and beneficial purpose." *Bridgestone/Firestone, Inc. v. Emp't Appeal Bd.*, 570 N.W.2d 85, 96 (Iowa 1997). "[C]ode provisions which operate to work a forfeiture of benefits are strongly construed in favor of the claimant." *Diggs v. Emp't Appeal Bd.*, 478 N.W.2d 432, 434 (Iowa Ct. App. 1991).

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 administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa Ct. 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. *State v. Holtz*, 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. *State v. Holtz*, Id. This judge finds it appropriate to point out the testimony of Warden Harris is deemed extremely credible. At all points, whether the evidence supported or did not support the position of employer, Warden Harris sought to present the evidence through clear and unbiased testimony.

The claimant was the only party to give first hand testimony as to the events leading to her termination. Employer chose not to bring any of the witnesses it relied upon in making its decision to terminate. Employer did not bring copies of the phone recordings that formed the crux of the investigation, so the judge had no ability to make an independent determination as to whether the coworkers were correct in stating that they believed it was the claimant on the other end of the phone line with the inmate during which time affections were shared. .

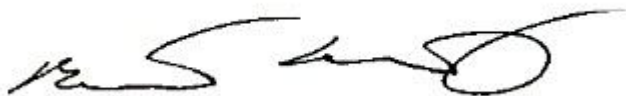
The gravity of the incident, number of policy violations and prior warnings are factors considered when analyzing misconduct. The lack of a current warning may detract from a finding of an intentional policy violation.

In this matter, the evidence fails to establish that claimant was discharged for an act of misconduct when claimant violated employer's policy concerning improper sexual contact with an inmate. Claimant was not warned concerning this policy.

The last incident, which brought about the discharge, fails to constitute misconduct because employer did not produce evidence such that the judge could make a finding of misconduct. Employer chose not to produce any witnesses to the alleged incidents, and did not produce anything that would credibly establish the claimant as being involved in phone calls with the inmate. The administrative law judge holds that claimant was not discharged for an act of misconduct and, as such, is not disqualified for the receipt of unemployment insurance benefits.

DECISION:

The decision of the representative dated April 9, 2025, (reference 01) is reversed. Claimant is eligible to receive unemployment insurance benefits, provided claimant meets all other eligibility requirements.



Blair Bennett | Administrative Law Judge II
Iowa Department of Inspections, Appeals & Licensing

May 8, 2025
Decision Dated and Mailed

bab/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. *There is no filing fee to file an appeal with the Employment Appeal Board.*

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 file a petition for judicial review in district court.

2. If you do not file 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 www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

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. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

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 no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

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.