

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

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**VALERIE A SANDOVAL**  
Claimant

**APPEAL 23A-UI-11996-DS-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THEISENS INC**  
Employer

**OC: 11/26/23  
Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge

**STATEMENT OF THE CASE:**

On December 21, 2023, the claimant filed an appeal from the unemployment insurance decision dated December 19, 2023, (Reference 01) that denied benefits. Notice of hearing was mailed to the parties' last known addresses of record for a telephone hearing to be held at 8:00 a.m. on January 11, 2023. The claimant participated personally. The employer participated through Kelly Boge, Human Resources Generalist. Employer's Exhibits A-D and Claimant's Exhibits 1-20 were admitted to the record. The administrative law judge took notice of the administrative record.

**ISSUE:**

Was the claimant discharged from the employment for disqualifying job-related misconduct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant worked for this employer as a Sales Associate from August 5, 2011, until November 22, 2023, when she was discharged by the employer. The claimant presented the employer with a notice from her medical provider in 2020 that advised the employer that the claimant needed a medical accommodation to her work schedule. Specifically, the claimant needed to work no later than 4 p.m. The employer provided this accommodation and adjusted the claimant's schedule to allow her to work earlier hours and no later than 4 p.m. In the Fall of 2023, the claimant was receiving fewer weekly hours in her schedule and decided to take a second job to supplement. The job she took in November 2023 required her to train in the evening on two occasions. The employer received a tip on November 17, 2023, that the claimant had worked evening hours at the second job. On November 20, 2023, the employer met with the claimant and asked her whether the information regarding her evening hours at the other job was true. The claimant confirmed that she had been required to train two evenings but also stated that this would not be an ongoing situation. Further, the claimant offered to quit the second job if Theisen's considered it a problem. The employer considered the claimant's evening training despite her accommodation with Theisen's to constitute dishonesty on her part. The employer contacted the claimant on November 22, 2023, and discharged her from the employment.

## REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 96.5(2)a provides:

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.

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 the 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 suspension of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions.

The employer has not met its burden of proof in establishing disqualifying misconduct. The claimant was discharged because she trained two evenings with another employer. The claimant was not dishonest with her employer, and offered to quit the other employment if Theisen's considered it a conflict or problem. Nonetheless, the employer elected to discharge the claimant immediately. While the employer may be within its rights to discharge the claimant,

there is no current act in the record that would constitute disqualifying misconduct in the context of eligibility for unemployment insurance benefits, and the employer has not met its burden to show that the claimant engaged in disqualifying misconduct. Benefits are allowed.

**DECISION:**

The decision dated December 19, 2023, (Reference 01) that denied unemployment insurance benefits is REVERSED. The claimant was discharged from the employment for no disqualifying reason. Benefits are allowed, provided the claimant is otherwise eligible.



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David J. Steen  
Administrative Law Judge

January 16, 2024  
Decision Dated and Mailed

DJS/jkb

**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. *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](http://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](http://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.