

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

NATHAN A THOMPSON
Claimant

EURO MARBLE AND TILE, LLC
Employer

APPEAL 23A-UI-04763-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/02/23
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Euro Marble and Tile, LLC, the employer/appellant,¹ filed an appeal from the Iowa Workforce Development (IWD) May 2, 2023 (reference 01) unemployment insurance (UI) decision. The decision allowed Mr. Thompson REGULAR (state) UI benefits because IWD concluded the employer dismissed him from work on March 31, 2023 for a reason that did not disqualify him from receiving UI benefits. The Iowa Department of Inspections and Appeals UI Appeals Bureau mailed notices of hearing to the employer and Mr. Thompson. The undersigned administrative law judge held a telephone hearing on May 25, 2023. The employer participated through Mersud Dolic, owner. Mr. Thompson did not participate in the hearing. The undersigned took official notice of the administrative record and admitted Employer's Exhibit 1 as evidence.

ISSUE:

Did the employer discharge Mr. Thompson from employment for disqualifying job-related misconduct?

Did IWD overpay Mr. Thompson 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. Thompson began working for the employer on February 28, 2022. He worked as a full-time tile helper. His employment ended on March 31, 2023.

Throughout Mr. Thompson's employment, Mr. Dolic told Mr. Thompson many times to not wear earbuds while working because doing so created a safety issue. The safety issue is that employees need to be able to hear what's going on while working on a construction site. Mr. Thompson continued to do. Mr. Dolic talked with Mr. Thompson many times about not meeting the employer's work expectations.

¹ Appellant is the person or employer who filed the appeal.

From December 2022 through the end of his employment, Mr. Thompson did not attend work thirteen times for various reasons. Mr. Dolic talked with Thompson several times about his attendance.

On March 21, the employer sent Mr. Thompson to complete a job assignment. Mr. Thompson told Mr. Dolic that he had completed the job, so Mr. Dolic checked Mr. Thompson's work. Mr. Dolic sent Mr. Thompson back to the job because the job was not done to the employer standards. Mr. Thompson went back to the job and completed it but he did not clean up after completing the job. On March 31, Mr. Dolic checked the job again and saw that Mr. Thompson had completed the job but did not clean up after the job. Mr. Dolic terminated Mr. Thompson's job that day because Mr. Dolic concluded that Mr. Thompson did not want to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes the employer discharged Mr. Thompson from employment for a reason that does not disqualify him from receiving UI benefits.

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 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 such 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.

Iowa Admin. Code r. 871-24.32(8) provides:

(8) *Past acts of misconduct.* While past acts and warnings can be used to determine the magnitude of a current act of misconduct, a discharge for misconduct cannot be based on such past act or acts. The termination of employment must be based on a current act.

The purpose of the subrule is to assure that an employer does not save up acts of misconduct and spring them on an employee when an independent desire to terminate arises

The employer has the burden of proof in establishing disqualifying job misconduct.² The issue is not whether the employer made a correct decision in separating the claimant from

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

employment, but whether the claimant is entitled to unemployment insurance benefits.³ Misconduct must be “substantial” to warrant a denial of job insurance benefits.⁴

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.

The most recent incident leading to the employer discharging Mr. Thompson must be a current act of misconduct to disqualify him from receiving UI benefits. The most recent act for which the employer terminated Mr. Thompson’s employment was because Mr. Thompson did not meet the employer’s work performance expectations about completing a job. In this case, the employer has not established a current act of misconduct on the part of Mr. Thompson. Benefits are allowed.

Since Mr. Thompson 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.⁵

DECISION:

The May 2, 2023 (reference 01) UI decision is AFFIRMED. The employer discharged Mr. Thompson from employment for a reason that does not disqualify him from receiving UI benefits. Benefits are allowed, as long as no other decision denies Mr. Thompson UI benefits. Any benefits claimed and withheld on this basis shall be paid.



Daniel Zeno
Administrative Law Judge

May 31, 2023
Decision Dated and Mailed

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³ *Infante v. Iowa Dep’t of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

⁴ *Newman v. Iowa Dep’t of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

⁵ *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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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.

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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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.