

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

**TAVITA F SMITH-WILLIAMS**  
Claimant

**APPEAL NO. 24A-UI-03290-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REM IOWA COMMUNITY SERVICES INC**  
Employer

**OC: 02/25/24**  
**Claimant: Respondent (2)**

Iowa Code Section 96.5(2)(a) – Discharge for Misconduct  
Iowa Code Section 96.3(7) - Overpayment

**STATEMENT OF THE CASE:**

On March 25, 2024, the employer filed a timely appeal from the March 15, 2024 (reference 01) decision that allowed benefits to the claimant, provided the claimant met all other eligibility requirements, and that held the employer's account could be charged for benefits, based on the deputy's conclusion that the claimant was discharged on February 21, 2024 for no disqualifying reason. After due notice was issued, a hearing was held on April 17, 2024. Tavita Smith-Williams (claimant) did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Jacqueline Boudreaux of ADP/Equifax represented the employer and presented additional testimony through Lakesha Johnson and Kalie Moore. Exhibit 1 was received into evidence. The administrative law judge took official notice of Iowa Workforce Development record of benefits disbursed to the claimant (DBRO). The administrative law judge took official notice of the fact-finding materials for the limited purpose of determining whether the employer participated in the fact-finding interview and, if not, whether the claimant engaged in fraud or intentional misrepresentation in connection with the fact-finding interview.

The administrative law judge notes Ms. Smith-Williams' email submitted at 12:28 p.m. on April 17, 2024. In that email, Ms. SmithWilliams notes her absence from the 9:00 a.m. appeal hearing, her obligation to call at the time at the hearing, and her erroneous assumption that she would be called at the time of the hearing. Ms. SmithWilliams' late submission does not provide good cause to reopen the hearing record. See Iowa Administrative Code Rule 87126.14(7). Pursuant to the same Administrative Code rule, the administrative law judge has neither read nor considered the additional information Ms. SmithWilliams included her email pertaining to the facts of the case.

**ISSUES:**

Whether the claimant was discharged for misconduct in connection with the employment.  
Whether the claimant was overpaid benefits.  
Whether the claimant must repay overpaid benefits.  
Whether the employer's account may be charged.

## **FINDINGS OF FACT:**

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

Tavita Smith-Williams (claimant) was employed by REM Iowa Community Services, Inc. as a full-time Direct Support Professional from 2020 until March 11, 2024, when the employer discharged her from the employment. The claimant last performed work for the employer on February 21, 2023. The claimant worked at a residence where three adult disabled women resided. The claimant's duties involved assisting the women with activities of daily living, such as cleaning, self-care, errands, and working toward individualized goals. The claimant's duties included transporting the women to medical appointments. The claimant's work hours were 8:00 a.m. to 9:00 p.m. Sunday, Monday and Tuesday. The claimant was not authorized to reside at the home. The claimant was required to maintain a personal vehicle for use in connection with her duties. The employer would compensate the claimant for her mileage expense. When the claimant did not have a personal vehicle, the employer made a company vehicle available.

The employer suspended the claimant from the employment on February 21, 2024 in response to a complaint made by one of the dependent adult women the claimant was supposed to assist. The client told the employer that the claimant had been hostile and had yelled at the client about the house being without toilet paper. The client told the employer that the claimant had called the client gay and lesbian due to then client sometimes sleeping in another client's bedroom. The client reported that two days earlier she had needed the claimant's help to get a medication but that the claimant was at that time taking a bath in the home. The client reported that the claimant had then walked around the home in her bra and underwear. The client reported that the claimant had eaten the client's food without permission and that the client had observed the claimant cooking and eating the client's bacon. The client reported that the client felt unsafe when the claimant was driving due to the claimant being on her phone and swerving through traffic. The client reported that the claimant had used the client's food stamp card to purchase items for the claimant without permission. The client reported that the claimant was having her personal mail delivered to the home and was having the client look out for package deliveries for the claimant.

After the employer spoke with the initial complainant, the employer interviewed the other dependent adult women who resided in the home. The other clients confirmed that the claimant would be hostile, would yell, and would be verbally abusive when she was in the home. One client confirmed seeing the claimant exiting the home's bathroom in her bra and underwear. One client said she too was scared to ride with the claimant because the claimant was on her phone, would drive too fast, and had been in an accident while driving the client. One or both clients confirmed the claimant called the initial complainant gay and lesbian and added that the claimant compelled the clients to sleep with their bedroom doors open. One of the clients told the employer that the claimant has used the clients funds to purchase toilet paper for the home and to also purchase a phone charger for the claimant without permission. One of the clients told the employer there had been a transfer of funds between the client and the claimant in connection with a gas purchase. One of the clients told the employer the claimant kept a basket of clothes in a closet in the home.

On February 22, 2024, the employer interviewed the claimant. The claimant confirmed that she had used the bathtub in the home, but asserted her bones had been aching and that she just wanted to sit in the tub. The claimant denied that she had walked around the home in her undergarments. The claimant affirmed that she used her phone during driving, but that she was

using it hands-free. The claimant denied that she had driven recklessly. The claimant told the employer that she was having mail delivered to the home because she was in the process of moving. The claimant did not respond to the employer's question about having packages delivered to the home. The claimant indicated that she kept a basket of clothes in the home, but implausibly asserted the clothes were there temporarily for her sister to collect. The claimant kept the clothes basket in a closet in the home.

The claimant stated that she did not recall being hostile. The claimant asserted that she thought it was the employer's policy to require clients to sleep with their bedroom door open. The claimant confirmed that she had used the client's funds to purchase a phone charger. The claimant confirmed the money transfer between her and a client in connection with a gas purchase. The claimant confirmed that she had used a client's funds in October 2023 to purchase food for herself, but asserted she had repaid the client.

The claimant's conduct violated the employer policies. The claimant had received appropriate training in the policies. The employer had no policy to police client conduct, including no policy requiring clients to sacrifice their privacy by sleeping with their bedroom doors open. Instead, any such requirement would need to be included in a client's care plan if needed. The claimant was a mandatory dependent adult abuse reporting and had completed training regarding dependent adult abuse. The training including training regarding verbal abuse and financial exploitation of dependent adults. The employer's policies prohibited the claimant from using or borrowing client funds for personal purchases and required that all purchases be supported by a receipt. The employer's policies prohibited jokes and negative comments regarding gender or sexual attributes.

The claimant established an original claim for benefits that was effective February 25, 2024. Iowa Workforce Development set the weekly benefit amount at \$582.00. The claimant received \$4,074.00 for seven weeks between February 25, 2024 and April 13, 2024. This employer is the sole base period employer.

On March 13, 2024, Iowa Workforce Development Benefits Bureau held a fact-finding interview that addressed the claimant's separation from the employment. An agent for the employer's representative of record, ADP Unemployment Group, answered the deputy's call and told the deputy to use the materials in the SIDES protest. The SIDES protest materials, filed on March 5, 2024, after the suspension date and prior to the discharge date, indicated the claimant was on a 30-day suspension while the employer investigated allegations that she used client property, had mail directed to the clients' home, took bath during her shift, and was involved in some sort of exchange. The SIDES protest materials indicated that if the employer found the allegations substantiated, the claimant would be discharged, but that it was unclear whether the claimant would be returning to the employment. The claimant participated in the fact-finding interview and provided a verbal statement. The claimant asserted she had merely sat in the bathtub to loosen her muscles due to diabetes. The claimant asserted she brought her own food to the home, but would prepare dinner for "the whole house." The claimant intentionally misrepresented by omission several material facts concerning the conduct that triggered her suspension and discharge.

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

Iowa Code section 96.5(2)(a) and (d) provides as follows:

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.

...

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. Misconduct by an individual includes but is not limited to all of the following:

...

(2) Knowing violation of a reasonable and uniformly enforced rule of an employer.

...

(6) Conduct that substantially and unjustifiably endangers the personal safety of coworkers or the general public.

...

(13) Theft of an employer or coworker's funds or property.

(14) Intentional misrepresentation of time worked or work carried out that results in the individual receiving unearned wages or unearned benefits.

See also Iowa Admin. Code r. 871-24.32(1)(a) (duplicating the text of the statute).

The employer has the burden of proof in this matter. See Iowa Code section 96.6(2). Misconduct must be substantial in order to justify a denial of unemployment benefits. Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of unemployment benefits. See *Lee v. Employment Appeal Board*, 616 N.W.2d 661 (Iowa 2000). The focus is on deliberate, intentional, or culpable acts by the employee. See *Gimbel v. Employment Appeal Board*, 489 N.W.2d 36, 39 (Iowa Ct. App. 1992).

While past acts and warnings can be used to determine the magnitude of the current act of misconduct, a discharge for misconduct cannot be based on such past act(s). The termination of employment must be based on a current act. See Iowa Admin. Code r.871 24.32(8). In determining whether the conduct that prompted the discharge constituted a "current act," the administrative law judge considers the date on which the conduct came to the attention of the employer and the date on which the employer notified the claimant that the conduct subjected the claimant to possible discharge. See also *Greene v. EAB*, 426 N.W.2d 659, 662 (Iowa App. 1988).

Allegations of misconduct or dishonesty without additional evidence shall not be sufficient to result in disqualification. If the employer is unwilling to furnish available evidence to corroborate the allegation, misconduct cannot be established. See 871 IAC 24.32(4).

The evidence in the record establishes a suspension and discharge for misconduct in connection with the employment. The weight of the evidence establishes that the claimant knowingly violated several reasonable and uniformly enforced employer policies. These include stealing food, money, and supplemental food benefits from the clients, verbally abusing one or

more of the clients in her care. The claimant's conduct demonstrated an intentional and substantial disregard of the employer's interests and of the interests of the dependent adults in her care. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements.

Iowa Code section 96.3(7) provides in relevant part as follows:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1)

(a) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. The employer shall not be relieved of charges if benefits are paid because the employer or an agent of the employer failed to respond timely or adequately to the department's request for information relating to the payment of benefits. This prohibition against relief of charges shall apply to both contributory and reimbursable employers. If the department determines that an employer's failure to respond timely or adequately was due to insufficient notification from the department, the employer's account shall not be charged for the overpayment.

(b) However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment.

The claimant received benefits but this decision disqualifies the claimant for those benefits. Though the employer did not satisfy the fact-finding interview participation requirement, the claimant intentionally misrepresented material facts at the fact-finding interview. The claimant is overpaid \$4,074.00 for seven weeks between February 25, 2024 and April 13, 2024. The claimant must repay the overpaid benefits. The employer's account is relieved of charge for benefits include benefits already paid.

**DECISION:**

The March 15, 2024 (reference 01) decision is reversed. The claimant was suspended on February 21, 2024 and discharged on March 11, 2024 for misconduct in connection with the employment. The claimant is disqualified for benefits until she has worked in and been paid wages for insured work equal to 10 times her weekly benefit amount. The claimant must meet all other eligibility requirements. The claimant is overpaid \$4,074.00 for seven weeks between February 25, 2024 and April 13, 2024. The claimant must repay the overpaid benefits. The employer's account is relieved of charge for benefits include benefits already paid.



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James E. Timberland  
Administrative Law Judge

April 26, 2024  
Decision Dated and Mailed

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**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:

**Employment Appeal Board  
6200 Park Ave 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.

**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>.

**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 Ave Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: 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 está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**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.