

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

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**DUSTIN A JAHN**  
Claimant

**OWEN INDUSTRIES INC**  
Employer

**APPEAL 23A-UI-09446-DZ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/03/23**  
**Claimant: Appellant (2)**

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Iowa Code § 96.5(2)a – Discharge  
Iowa Code § 96.4(3) – Able to and Available for Work

**STATEMENT OF THE CASE:**

Dustin A. Jahn, the claimant/appellant,<sup>1</sup> appealed the Iowa Workforce Development (IWD) September 25, 2023 (reference 01) unemployment insurance (UI) decision. IWD denied Mr. Jahn REGULAR (state) UI benefits because IWD concluded the employer discharged him from work on August 11, 2023 for excessive unexcused absenteeism after the employer had warned him. On October 10, 2023 the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Mr. Jahn and the employer for a telephone hearing scheduled for October 23, 2023.

The undersigned administrative law judge held a telephone hearing on October 23, 2023. Mr. Jahn participated in the hearing personally. The employer participated through Molly Maher, human resources. The undersigned rescheduled the hearing on his own motion because the employer had sent Mr. Jahn the employer's over twenty pages of documents, but he had not yet received them. The parties agreed to a new hearing date and time of October 27, 2023 at 10:00 a.m. On October 25, 2023 the Iowa DIAL, UI Appeals Bureau mailed a notice of hearing to Mr. Jahn and the employer for a telephone hearing scheduled for October 27, 2023.

The undersigned administrative law judge held a telephone hearing on October 27, 2023. Mr. Jahn participated in the hearing personally. The employer participated in the hearing through Molly Maher, human resources. The undersigned admitted Employer's Exhibits 1 and Claimant's Exhibits A-E as evidence.

**ISSUES:**

Did the employer discharge Mr. Jahn from employment for disqualifying, job-related misconduct?  
Is Mr. Jahn able to and available for work?

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<sup>1</sup> Claimant is the person who applied for UI benefits. Appellant is the person or employer who appealed.

## **FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Jahn began working for the employer in April 2022. He worked as a full-time shipping and receiving worker and a liaison. His employment ended on August 11, 2023.

Mr. Jahn had two supervisors – the plant manager and his supervisors – because he worked two different jobs. On Thursday, July 27, 2023, Mr. Jahn submitted a paid-time-off (PTO) request to the plant manager asking to be off work on August 11 from 8:00 a.m. – 12:00 p.m. Mr. Jahn put the request in the plant manager's mailbox. Mr. Jahn made his request to the plant manager because his supervisor was not at work that day. Mr. Jahn never heard back from the employer when he submitted a PTO request, and he did not hear back from the employer this time.

The following week, Mr. Jahn's supervisor asked him to work for another employee the week of August 7-11. Mr. Jahn agreed to do so and told his supervisor that he already had PTO scheduled for Friday, August 11.

On August 11, Mr. Jahn worked until 8:14 a.m., then he clocked out. Mr. Jahn waved goodbye to his supervisor and left. Later that day, the plant manager called Mr. Jahn and asked him why he left work early. Mr. Jahn explained, and the plant manager responded that his explanation didn't matter because the plant manager had not checked the plant manager's mailbox. The plant manager told Mr. Jahn that his employment was terminated for job abandonment. Mr. Jahn is ready to go to work and is searching for work.

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

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

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

...

(9) Excessive unexcused tardiness or absenteeism.

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.<sup>2</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>3</sup> Misconduct must be "substantial" to warrant a denial of job insurance benefits.<sup>4</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.

The most recent incident leading to the employer discharging Mr. Jahn must be a current act of misconduct to disqualify him from receiving UI benefits. The most recent act for which the employer terminated Mr. Jahn's employment was because he left early on August 11 after he had submitted a PTO request over two weeks earlier. Mr. Jahn reasonably believed that the employer had approved his request because, just like in the past, the employer did not say anything to him about his request. Yet, the employer ended Mr. Jahn's employment. The employer has not established a current act of disqualifying, job-related misconduct on the part of Mr. Jahn. Mr. Jahn is eligible for UI benefits based on how his job ended with this employer.

The undersigned further concludes Mr. Jahn is able to and available for work.

Iowa Code section 96.4(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c". The work search requirements of this

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

<sup>3</sup> *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984).

<sup>4</sup> *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984).

subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1) and (2) provide:

Benefit eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

To be able to work, "[a]n individual must be physically and [mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood."<sup>5</sup> "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides."<sup>6</sup> A person claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work.<sup>7</sup>

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<sup>5</sup> *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1).

<sup>6</sup> *Sierra* at 723.

<sup>7</sup> Iowa Admin. Code r. 871-24.22.

In this case, Mr. Jahn has established that he is able to and available for work. Mr. Jahn is ready to work, and he is looking for work. Mr. Jahn is eligible for UI benefits based on his ability to and availability for work.

**DECISION:**

The September 3, 2023 (reference 01) UI decision is REVERSED. The employer discharged Mr. Jahn from employment for a reason that does not disqualify him from receiving UI benefits and Mr. Jahn is able to and available for work. Mr. Jahn is eligible for UI benefits, as long as no other decision denies him UI benefits. Any benefits Mr. Jahn claimed and IWD withheld on this basis must be paid.



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Daniel Zeno  
Administrative Law Judge

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October 30, 2023  
Decision Dated and Mailed

DZ/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:

**Employment Appeal Board  
6200 Park Avenue Suite 100  
Des Moines IA 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> 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 IA 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 adquiera 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.