

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

REX A PETERSEN

Claimant

THE HILLSHIRE BRANDS COMPANY

Employer

APPEAL 23A-UI-05153-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/30/22

Claimant: Appellant (2)

Iowa Code § 96.5(2)a – Discharge

STATEMENT OF THE CASE:

Rex A. Petersen, the claimant/appellant,¹ filed an appeal from the Iowa Workforce Development (IWD) May 15, 2023 (reference 02) unemployment insurance (UI) decision. The decision denied Mr. Petersen REGULAR (state) UI benefits because IWD concluded that the employer discharged him from work on November 4, 2022 for violating a known company rule. The Iowa Department of Inspections and Appeals UI Appeals Bureau mailed notices of hearing to Mr. Petersen, Mary C. Hamilton, Mr. Petersen’s attorney, and the employer. The undersigned administrative law judge held a telephone hearing on June 7, 2023. Mr. Petersen participated personally. Mary C. Hamilton, attorney, represented Mr. Petersen. The employer did not participate in the hearing.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Mr. Petersen began working for the employer on September 25, 2017. He worked as a full-time building maintenance person/groundskeeper. His employment ended on October 31, 2022.

One of Mr. Petersen’s co-workers (Co-Worker A) had been calling Mr. Petersen names, including “little puppy.” Co-Worker A also called another co-worker (Co-Worker B) names, including little puppy. Mr. Petersen did not like this. But Mr. Petersen did not report the name-calling to the employer because he had reported other incidents to the employer in the past and the employer took no action.

On October 17, 2022, Mr. Petersen brought a dog collar to work. Mr. Petersen testified in the appeal hearing that he brought the dog collar to work as a joke, to get Co-Worker A to stop calling him “little puppy,” and/or to make Co-Worker A feel how it felt to be called “little puppy.” Mr. Petersen gave the dog collar to Co-Worker B and then went to the toilet. When Mr.

¹ Claimant is the person who filed the UI claim with IWD. Appellant is the person or employer who filed the appeal.

Petersen returned from the toilet, he saw that Co-Worker B had given the dog collar to Co-Worker A.

Later that day, the human resources (HR) manager called Mr. Petersen into the office and asked him about the dog collar incident. Mr. Petersen explained that it was a joke. Mr. Petersen testified that the employer does not have a policy about making jokes at work. The HR manager told Mr. Petersen to clock out and that the employer would be in touch with him within 2-3 days. When the employer did not get in with him, Mr. Petersen contacted the employer twice to ask for an update. Both times, the HR manager told Mr. Petersen that was no update. On October 31, the employer called Mr. Petersen and told him that his job was over. The employer did not give Mr. Petersen a reason for why his job was over.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes the employer discharged Mr. Petersen 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 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(4) provides:

(4) Report required. The claimant's statement and employer's statement must give detailed facts as to the specific reason for the claimant's discharge. 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. In cases where a suspension or disciplinary layoff exists, the claimant is considered as discharged, and the issue of misconduct shall be resolved.

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 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.

In this case, Mr. Petersen explained that he was joking and/or trying to get Co-Worker A to stop calling him names when brought a dog collar to work and gave it to Co-Worker B. Even accepting Mr. Peterson’s reasons as true, Mr. Petersen’s “joke” was a poor and basic response to Co-Worker A calling him names. Mr. Petersen tries to make himself look less responsible for his bad “joke” by testifying that he did not personally give the dog collar to Co-Worker A, and he was not in the room when Co-Worker B gave the dog collar to Co-Worker A. But it is clear that Mr. Petersen was in on the “joke,” and he bears some responsibility for it. Mr. Petersen brought the dog collar to work, and he handed it to Co-Worker B who he knew Co-Worker A also called names. Mr. Petersen knew what was going on.

In the end, however, the employer bears the burden to show disqualifying job-related misconduct. The employer did not participate in the hearing and provided no evidence of misconduct on the part of Mr. Petersen. Since the employer has not met its burden, benefits should be allowed.

DECISION:

The May 15, 2023 (reference 02) UI decision is REVERSED. The employer has not shown that it discharged Mr. Petersen from employment for a reason that disqualifies him from receiving UI benefits. Benefits are allowed, as long as no other decision denies Mr. Petersen UI benefits.



Daniel Zeno
Administrative Law Judge

June 8, 2023
Decision Dated and Mailed

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

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).

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
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 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.