

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

SHELBY L BURNS
Claimant

LINN COUNTY HUMAN RESOURCES DEPT
Employer

APPEAL 22A-UI-19753-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/23/22
Claimant: Appellant (1)

Iowa Code § 96.5(2)a—Discharge from Employment

STATEMENT OF THE CASE:

On December 15, 2022, claimant Shelby L. Burns filed an appeal from the December 5, 2022 (reference 02) unemployment insurance decision that denied benefits based on a determination that claimant was discharged for disqualifying dishonesty in connection with her employment. The parties were properly notified of the hearing. A telephonic hearing was held at 11:00 a.m. on Wednesday, January 11, 2023. The claimant, Shelby L. Burns, participated. The employer, Linn County, participated through testimony of primary witness Colonel Doug Riniker with Linn County Sheriff's Office; and testimony of additional witness Human Resources Analyst Andrea Ewers. Ewers also acted as the employer's representative. Employer's Exhibits 1 through 9 were received and admitted into the record.

ISSUE:

Was claimant discharged for disqualifying, job-related misconduct?

FINDINGS OF FACT:

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

Claimant began working for the employer on January 2, 2008. Since 2019, she had held a full-time secretary position in the Criminal Division's Detective Bureau within the Linn County Sheriff's Department. Claimant was discharged from employment on October 24, 2022, for violating policies related to accessing records and for dishonesty.

As a secretary in the Detective Bureau, claimant had access to several databases and documents to help her perform her job. One of these, the ILEADS database, was a shared database between the Sheriff's Department and the Cedar Rapids Police Department. Claimant used this database when she was performing background check tasks and sex-offender-registry-related tasks. Claimant received training on how to operate ILEADS and knew she was not permitted to use the database for reasons unrelated to her work. Claimant also had access to the "pass on" report, which came to her email each day. (Exhibit 3) This "pass on" alerted all recipients to the Sheriff's Office patrol activities from the retiring shift as well as information from

cooperating police departments about their patrol activities. This document was marked as confidential.

The incident leading to claimant's employment ending occurred on August 17, 2022. That morning, claimant used the employer's ILEADS database, which it shares with the Cedar Rapids Police Department, to access information a tragic death for solely personal reasons. This access was immediately caught by someone within the Cedar Rapids Police Department, who contacted claimant's employer. When claimant was questioned about accessing the information within ILEADS, she concocted a lie to try and avoid punishment.

Based on claimant's obvious dishonesty during the ILEADS investigation, Col. Riniker ordered an Internal Affairs investigation into claimant and her workplace conduct. This investigation commenced in early September 2022 and was conducted by Major Chad Colston. He concluded that claimant's ILEADS database access was part of an overall pattern of accessing cases within the Cedar Rapids Police Department's database "to satisfy her curiosity or for her own amusement." (Exhibit 3) Maj. Colston described claimant repeatedly acting dishonestly during the weeklong investigation, noting that after she was given an opportunity to come clean by Lieutenant Beuter, she "[continued] with her deception and [handed] in another report with very little details and truth." In total, Maj. Colston found that claimant accessed 55 cases between June 2022 and September 2022 through the ILEADS database that she had no legitimate reason for accessing.¹

On September 26, 2022, Maj. Colston interviewed claimant as part of his Internal Affairs investigation. Claimant made multiple statements during that interview that Maj. Colston concluded were not truthful. (Exhibit 3) Immediately following the interview, claimant was placed on paid administrative leave due to the Internal Affairs investigation revealing her extensive access to confidential records without proper justification and her dishonesty. (Exhibit 4) Maj. Colston then concluded the investigation, typed up his full investigation summary, and delivered it to Sheriff Gardner and Col. Riniker.

The employer determined claimant should be discharged for multiple reasons. Claimant's actions were intentional and without any underlying work-related purpose. Her abuse of access endangered the Sheriff's Office's report-sharing agreement with the Cedar Rapids Police Department. Her actions violated the law, may warrant criminal charges, and if convicted, would prohibit her from ever performing the essential functions of her job. In addition to her intentional act of abusing the database access, claimant submitted dishonest reports to cover up her abuse. She then lied during her Internal Affairs interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged for disqualifying, job-related misconduct. Benefits are withheld.

Iowa Code section 96.5(2)(a) and (d) provide:

An individual shall be *disqualified for benefits*:

¹ There were eighty work days between June 1, 2022 and September 30, 2022. On average, this means claimant accessed between three and four cases each week. While claimant's testimony may be technically accurate – "It wasn't like a daily occurrence" – it was not far off from one.

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 even 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.

...

(10) Falsification of any work-related report, task, or job that could expose the employer or coworkers to legal liability or sanction for violation of health or safety laws.

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).

What constitutes misconduct justifying termination of an employee and what misconduct warrants denial of unemployment insurance benefits are two separate decisions. *Pierce v. Iowa Dep't of Job Serv.*, 425 N.W.2d 679 (Iowa Ct. App. 1988). Misconduct serious enough to warrant discharge is not necessarily serious enough to warrant a denial of job insurance benefits. Such misconduct must be "substantial." *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). The focus is on deliberate, intentional, or culpable acts by the employee.

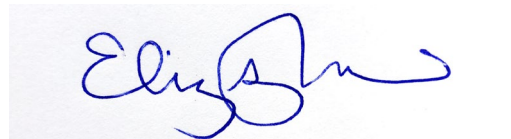
It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

The findings of fact show how I have resolved the disputed factual issues in this case. I assessed the credibility of the witnesses who testified during the hearing, considering the applicable factors listed above, and using my own common sense and experience. I find the claimant was not a credible witness. Colonel Riniker's testimony was believable and compelling. While the precise timeline of the administrative events was not perfectly clear, the events leading to the separation from employment and the reasoning behind the employer's decision to discharge the claimant were plainly stated.

The ample testimony and documentation provided by the employer set forth example after example of claimant breaching the duty of confidentiality and the privacy of innumerable individuals whose information is contained within secure databases for specific, public safety purposes in order to satisfy her own curiosity and to find entertainment in the other people's trauma. Claimant now admits she did this, after lying about it in August 2022 when initially asked, after lying about it during the Internal Affairs investigation in September 2022, and after starting to lie about it during her testimony at the hearing. Her actions demonstrate a callous disregard for the people served by the Cedar Rapids Police Department, for her obligation of good record stewardship and appropriate work behavior, and for the truth in any forum. Benefits must be denied.

DECISION:

The December 5, 2022 (reference 02) unemployment insurance decision is affirmed. Claimant was discharged from employment due to job-related misconduct. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible.



Elizabeth A. Johnson
Administrative Law Judge

January 19, 2023
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
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.