

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

BRIANNA G. BUDD

Claimant

APPEAL 23A-UI-09896-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WARREN H PHILLIPS III PHD PC

Employer

OC: 09/17/23

Claimant: Respondent (1)

Iowa Code §96.5(2)a-Discharge/Misconduct

Iowa Code §96.5(1)- Voluntary Quit

Iowa Code § 96.3(7) – Recovery of Benefit Overpayment

Iowa Admin. Code r. 871-24.10 – Employer/Representative Participation Fact-finding Interview

STATEMENT OF THE CASE:

On October 17, 2023, the employer/appellant filed an appeal from the October 9, 2023, (reference 02) unemployment insurance decision that allowed benefits based on claimant being dismissed on September 15, 2023 for excessive absences. The Iowa Workforce Development representative determined the absences were due to illness and were properly reported. The parties were properly notified about the hearing. A telephone hearing was held on November 3, 2023. Claimant did not call in to participate. Employer participated through hearing representative Julie Laxton. The Chief People and Clinical Operations Officer, Taylor Sneller, testified on behalf of the employer. Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 were admitted into the record. Administrative notice was taken of claimant's unemployment insurance benefits including DBRO.

ISSUES:

- I. Was the separation a layoff, discharge for misconduct, or voluntary quit without good cause?
- II. Should claimant repay benefits?
- III. Should the employer be charged due to employer participation in fact finding?
- IV. Is the claimant overpaid benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on July 11, 2022. Claimant last worked as a full-time office manager.

On June 2, 2023, claimant was given a verbal warning by the employer for collecting lower amounts than was charged to the clients.

On July 12, 2023, claimant was placed on a performance improvement plan (PIP) that warned claimant that she needed to improve her job performance. (Exhibit 2). Specifically claimant was warned she needed to improve on her quality/efficiency due to complaints from clients that the phone were not being answered or their phone calls were not being returned in a timely manner. (Exhibit 2). Claimant also needed to improve on her productivity due to failing to schedule clients when there was openings. (Exhibit 2). Claimant was also warned about her attendance T and her conduct in resisting to perform her assigned work duties. (Exhibit 2). Claimant was not performing her duties related to the joy and wellness budget, failing to follow the company policy or HIPPA regulations regarding properly disposing of, retaining or storing paper documents. (Exhibit 2, pg. 2). Claimant was also put on a PIP because she was challenging or disregarding a directive, question, or request from a senior leadership member regarding requests to forward emails, ignoring instructions on HIPPA regulations/law on retention of records, and disregarding the relevance of functions of communication within the office and her role. (Exhibit 2, pg. 2). Furthermore, claimant was placed on the PIP due to the collection of patient copays, deductibles, and balances. Claimant was lowering the rates of patient collections. (Exhibit 2, pg. 2).

On September 1, 2023, claimant brought her dog to work. The employer determined this violated Iowa Department of Public Health (IDPH) and the Commission on Accreditation of Rehabilitation Facilities (CARF) standards. The final incident lead to the employer determining claimant was going to be discharged.

The employer did not have an opportunity to discuss claimant's separation with her until September 15, 2023, due to claimant being absent due to illness on September 7, 11, 12, 13, and 14, 2023. Claimant provided a doctor's note for the absences on September 11th, 12th, and 13th.

Claimant was separated from employment on September 15, 2023, when she was discharged due to her job performance regarding her quality/efficiency, attendance, conduct regarding abiding by the rules and regulations of HIPPA, and for bringing her dog into work on September 1, 2023.

Claimant filed for benefits with an effective date of September 17, 2023. Claimant's gross weekly benefit amount is \$535.00. (DBRO). Claimant has filed for one week of benefits for the week ending October 21, 2023. Claimant has received a gross total of \$535.00 in unemployment benefits.

The employer participated in the fact-finding interview with Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was discharged from employment for no disqualifying reason.

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

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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:

(1) Material falsification of the individual's employment application.

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

(3) Intentional damage of an employer's property.

(4) Consumption of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in a manner not directed by the manufacturer or a combination of such substances, on the employer's premises in violation of the employer's employment policies.

(5) Reporting to work under the influence of alcohol, illegal or nonprescribed prescription drugs, or an impairing substance in an off-label manner, or a combination of such substances, on the employer's premises in violation of the employer's employment policies, unless the individual is compelled to work by the employer outside of scheduled or on-call working hours.

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

(7) Incarceration for an act for which one could reasonably expect to be incarcerated that result in missing work.

(8) Incarceration as a result of a misdemeanor or felony conviction by a court of competent jurisdiction.

(9) Excessive unexcused tardiness or absenteeism.

(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.

(11) Failure to maintain any licenses, registration, or certification that is reasonably required by the employer or by law, or that is a functional requirement to perform the individual's regular job duties, unless the failure is not within the control of the individual.

(12) Conduct that is libelous or slanderous toward an employer or an employee of the employer if such conduct is not protected under state or federal law.

(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.

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). The issue is not whether the employer made a correct decision in separating claimant, but whether the claimant is entitled to unemployment insurance benefits. *Infante v. Iowa Dep't of Job Serv.*, 364 N.W.2d 262 (Iowa Ct. App. 1984). Misconduct must be "substantial" to warrant a denial of job insurance benefits. *Newman v. Iowa Dep't of Job Serv.*, 351 N.W.2d 806 (Iowa Ct. App. 1984). "Misconduct serious enough to warrant the discharge of an employee is not necessarily serious enough to warrant a denial of benefits." *Lee v. Employment Appeal Bd.*, 616 N.W.2d 661, 665 (Iowa 2000).

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. However, if the employer 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 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.

Claimant was on a performance improvement plan. However, the final incident that resulted in claimant's discharge was her bringing her dog into work. The employer determined this is against IDPH and CARF standards.

There may be instances where employees engage in isolated acts of negligence, unsatisfactory conduct, or poor judgment that violates some rule or regulation. This fact alone does not convert a single negligent act into misconduct. The conduct for which claimant was discharged was an isolated incident of poor judgment. A claimant will not be disqualified if the employer shows only "inadvertencies or ordinary negligence in isolated instances." 871 IAC 24.32(1)(a). When looking at an alleged pattern of negligence, previous incidents are considered when deciding whether a "degree of recurrence" indicates culpability.

In this case the claimant received a previous warning on June 2, 2023, for incorrectly collecting lower amounts from patients. Claimant was then put on a PIP plan. The PIP plan did not cover performance issues such as bring a dog into work. An employee is entitled to fair warning that the employer will no longer tolerate certain performance and conduct. Without fair warning, an employee has no reasonable way of knowing that there are changes that need be made in order to preserve the employment. If an employer expects an employee to conform to certain expectations or face discharge, appropriate (preferably written), detailed, and reasonable notice should be given.

In this case the employer has only shown that claimant was negligent. "[M]ere negligence is not enough to constitute misconduct." *Lee v. Employment Appeal Board*, 616 N.W.2d 661, 666 (Iowa 2000). Because the employer has failed to establish disqualifying misconduct, benefits are allowed, provided claimant is otherwise eligible. Employer's account is subject to charge.

The issue of whether the claimant is overpaid benefits and whether the employer participated in the fact-finding interview is moot since claimant is eligible for benefits.

DECISION:

The October 9, 2023, (reference 02) unemployment insurance decision is AFFIRMED. Claimant was discharged from employment for no disqualifying reason. Benefits are allowed, provided she is otherwise eligible.

Since claimant is eligible for benefits the issue of whether the claimant was overpaid benefits and whether the employer participated in the fact-finding interview is moot.



Carly Smith
Administrative Law Judge

November 6, 2023
Decision Dated and Mailed

CS/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:

**Iowa Employment Appeal Board
6200 Park Avenue 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> 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:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 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 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.

